



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

Civil Appeal Number 28 of 2025
Supreme Court Civil Case Number
38 of 2025

BETWEEN: BL25 Appellant

AND: Republic of Nauru Respondent

BEFORE: Khan P
Palmer JA
Coates JA

Date of Hearing: 14 May 2026
Date of Judgement: 10 June 2026

Case may be cited as: BL25 v The Republic

CATCHWORDS: Where Tribunal expresses matters by way of obiter dictum – The Court has the task of isolating the integral parts of the reasons of the Tribunal from the inessential parts – The Republic of Nauru is bound by the common law of England – pursuant to s111 of the Supreme Court Act 2018 – Where error of law does not affect the validity of a decision – the error does not provide a basis to set aside the decision.

APPEARANCES:

Counsel for the appellant: A Aleksov (instructed by International Crossover Pty Ltd)
Counsel for the respondent: R O'Shannessy (instructed by the Republic of Nauru)

JUDGMENT

1. **BY THE COURT:** This is an appeal against the decision of Brady J (primary judge) dismissing the appellant's appeal from a decision of the Refugee Status Review Tribunal (Tribunal). The Tribunal found that the appellant was not a refugee under the *Refugees Convention Act 2012* (the Act) and he was not owed complementary protection in Nauru pursuant to its international obligations.
2. The Tribunal stated at [100] of the decision as follows:

“...the Tribunal accepts that there may still be uncertainty in the political landscape of Bangladesh, however, it is now ten months since AL government collapsed, the violence and unrest has calmed, and it is expected that the BNP will most likely win the election when it is held. In these circumstances, the Tribunal is satisfied that the applicant will be able to access state protection should he be subject to any criminal conduct in the future.”
3. It was the appellant's contention in the Court below that the Tribunal's finding about access to state protection was made without any factual finding by the Tribunal and therefore it was an error of law. The primary judge found that the Tribunal having decided that the appellant was not a refugee – it was not obliged to consider whether Bangladesh could give protection to him and found that the comments about state protection were strictly superfluous and immaterial to the outcome or as the counsel for the appellant, Mr Aleksov, puts it was “mere surplusage”; and His Honour found that there was no error of law.
4. The appellant raised two grounds of appeal in the Court below which were:
 - (a) The Tribunal did not correctly understand or apply the test for state protection;
 - (b) The Tribunal failed to consider the appellant's submissions on state protection.
5. The appellant raised the same grounds in this Court alleging that the primary judge erred in failing to find that the Tribunal did not correctly understand or apply the test for state protection; and in failing to find that the Tribunal did not consider the appellant's submissions on state protection.

BACKGROUND

6. The appellant was born on 8 September 1986. He is a citizen of Bangladesh.
7. The appellant is married with two children. His family lived in a house with his parents.
8. The appellant arrived in Australia in May 2024 and on 1 June 2024 he was transferred to Nauru pursuant to a memorandum of understanding entered into between the governments of Nauru and Australia.
9. On 25 June 2024 the appellant applied for Refugee Status Determination (RSD) and on 4 September 2024 the Secretary for Multicultural Affairs made a decision refusing to

recognise the appellant as a refugee and refusing the claim for complementary protection.

10. On 19 September 2024 the appellant applied to the Tribunal for a review of the Secretary's decision and supporting documents and submissions were filed on his behalf and he gave evidence before the Tribunal on 23 January 2025. He was assisted by an interpreter and was represented by a legal representative who presented arguments on his behalf.
11. On 29 June 2025 the Tribunal found that the appellant was not a refugee and was not owed complementary protection and affirmed the decision of the Secretary.

STATE PROTECTION

12. Both parties agree that the concept and test for state protection is the same for complementary protection and that was discussed by His Honour at [14] and [15] of the judgement – essentially there must be an appropriate criminal law, and there must also be the provision of a reasonably effective and impartial police force and justice system – *Minister for Immigration and Multicultural Affairs v S152/2003*¹.
13. The Tribunal's decision at [100] states as follows:

[100] The Tribunal has accepted that the applicant and his father may have been assaulted in the past. The Tribunal is satisfied, in his father's case, the local chairman and village elders negotiated an apology and compensation, and in the applicant's case, the police laid charges against the accused and, despite the accused having links to AL, those charges are still in place. The Tribunal is satisfied that the applicant can obtain protection in the event of any assault in the future. Further, the country information above indicates that since the collapse of the AL government and the loss of power and patronage that flowed from the AL government to local affiliates, and the reforms being implemented by the interim government, the police are no longer likely to act at the behest of AL leaders or powerful associates in the event of criminal activity by the people associated with the AL. The Tribunal accepts that there may still be uncertainty in the political landscape in Bangladesh, however, it is now ten months since the AL government collapsed, the violence and unrest has calmed, and it is expected that the BNP will most likely win the election when it is held. In these circumstances, the Tribunal is satisfied that the applicant will be able to access protection should he be subject to any criminal conduct in the future.
14. Mr Aleksov submits that the Tribunal stated in [100] its decision that the appellant could access state protection in the event of him being subject to any criminal conduct in the future – that the Tribunal did not have any evidence nor did it make any findings necessary to rely on state protection and that the Tribunal made an error.
15. Mr Aleksov submits that if the Tribunal applied state protection without any evidence or making any findings, then the Republic's concedes that it was an error, however the

¹ (2004) 222 CLR1

Republic's position is that the Tribunal's decision should not be quashed because although the Tribunal said that the appellant will be able to access state protection – in reality the Tribunal did not apply state protection.

16. Mr Aleksov submits that both the primary judge and the Republic are wrong to suggest that what the Tribunal did was either *orbiter dictum* or surplusage. He further submitted that unlike a Court a Tribunal does not state matters by way of *orbiter dictum*. He urged us to read the decision as it is presented and he concedes that the Tribunal may respond to matters as a courtesy to some well-advanced argument or submission and he reiterates that unless a Tribunal says so we should not read it in that way.
17. Mr Aleksov referred us to s34(4) of the Act which requires the Tribunal to give a written statement setting out the decision, the reasons and the findings on material questions of facts and refer to the evidence or other material on which those findings are based.
18. Mr O'Shannessy on the issue of *orbiter dictum* submitted that the Tribunal and the Courts perform two different functions – the Tribunal is an expert in the determination of refugee applications, with the Court considering arguments of legal issues – fundamentally they perform two different roles. He submitted that in relation to s34(4)(b) there is an obligation on the Tribunal to meet minimum requirements which it met; and on the issue of *orbiter dictum* he relied on the case of *VAF v The Minister for Immigration and Multicultural and Indigenous Affairs*² where it is stated that [33] the Court as a matter of judgment is required to isolate what were the “integral parts of the reasons ... and the task is an interpretative one”. Paragraph [33] states as follows:

[33] It commonly is the case that the detail and complexity of the case advanced by a visa applicant, and the information that is given and garnered for the purposes of considering it, results in the tribunal being confronted with issues that may be of varying importance, relevance and centrality both to the decision to be taken and to the reasoning that in the event sustains that decision. While the reasoning process may advert to, and express views on, such issues, all will not necessarily constitute part of the reason for the Tribunal's decision. tribunals, no less than courts, engage in their own species of dicta often enough for reasons related to haste and pressure in composition. When a tribunal's reasons are to be evaluated for s 424A (1) purposes, the Court as a matter of judgment is required to isolate what were the integral parts of the reasons for the tribunal's decision. That task, necessarily, is an interpretative one. In some instances the differentiation of the integral and the inessential may be by no means easy – and made the more so by less than explicit indications in the reasons themselves as to what the Tribunal itself considered to be integral.
19. Mr O'Shannessy submits that the primary judge's decision is entirely consistent with the observations made in the case of *VAF*.
20. Mr O'Shannessy relied on the case of *Razai v Minister for Immigration and Citizenship*³ where North J stated at [33] and [36] as follows:

² (2004) FCAFC 123

³ [2012] FCA 394

- [33] McHugh J in *S152* thought that the issue of state protection had not been raised before the tribunal at all. But he said that if it had been raised the finding of the tribunal did not require it to be decided. See [46]. At [88] his Honour said:

... Having found that the husband and, through him, his wife did not have a well-founded fear of persecution, the tribunal was not required to determine whether Ukraine had the ability in a practical sense or otherwise to eliminate acts that harmed Jehovah's Witnesses.

This reasoning applies in the present case.

- [36] *S152* does explain that the way in which the failure of state protection might arise in the claims of persecution by non state agents. But, it does not require consideration of that issue where the decision maker finds that there is no real chance of harm to the applicant. Further, the fact that the applicant relies on the failure of state protection as an argument does not compel the decision maker to determine the issue. To do so is unnecessary where the preliminary finding of fact is made against the applicant.

21. Mr O'Shannessy relied on the case of *REF001 v The Republic*⁴ where it is stated at [64] as follows:

- [64] However, the ratio of Crulci J goes further than the reasoning of Gleeson CJ and, in my view, is not supported by authority. I respectfully disagree with the view of Crulci J that the Tribunal is obliged to consider a submission that lacks merit because of a fundamental consideration such as the fact that the claims of the Appellant could not have engaged complementary protection obligations. This is plainly incorrect. While it is good practice for the Tribunal to engage with unmeritorious or ill-conceived submissions, it is not obliged to do so and its failure to do so do not constitute an error of law.

22. He also relied on the case of *WET054 v The Republic of Nauru*⁵ where the Court stated at [48] as follows:

- [48] We are convinced that the Tribunal took into account the claims related to the two individuals mentioned by the Appellant. Additionally, we hold that the Tribunal is not obliged to address unmeritorious claims, and disregarding such claims does not amount to an error of law. We are satisfied that the Tribunal adequately evaluated claims in question and arrived at a well-reasoned conclusion. We have found no error of law, and therefore, the fourth proposed ground of appeal lacks merit.

23. Mr O'Shannessy further submitted that the Tribunal when it referred to state protection was referring to the specific claim made by the appellant in his submissions at page 138 of Appeal Book at [116] and not a general claim.

⁴ (2018) NRSC54

⁵ [2023] NRCA8

24. In the written submissions filed by the appellant⁶ it is stated at [14] and [15] as follows:

[14] This appeal raises the question: what principled approach is the Court to take where there is an error of law, but the error does not matter? Put another way – does the absence of a causal link between error and the outcome of a decision mean that the Court should set aside a decision? The answer, clearly, is no. In that scenario, the decision has been made by the Tribunal according to law. There is a complete legal basis for the decision that has been reached. There is no error of law.

[15] While there has been recent debate in Australia about the scope of this principle,²⁰ Australian law has, functionally, reached a relevantly similar position to the law in England and the law in New Zealand. That position is (speaking broadly and excluding issues of procedural fairness), where an error does not affect the validity of a decision, the error does not provide a basis on which to set aside a decision. That position accords with logic, principle and authority. There is no reason for Nauruan common law to diverge from the common law in these other comparable jurisdictions (noting in particular, in respect of the position under the common law of England, s111 of the *Supreme Court Act 2018*).

CONSIDERATION

25. The Tribunal made findings against the appellant in relation to the claims by him and came to the conclusion he was not a refugee – nor was he owed complementary protection. That decision is not challenged and the only challenge is in relation to the reference to future assault for which it is stated that he can seek state protection. The respondents deny that it was an error of law.

EVEN IF IT WAS AN ERROR OF LAW – WOULD THAT AFFECT THE TRIBUNAL’S DECISION

26. The respondent submits that even if it was an error – it does not necessarily affect the outcome and for this proposition the respondent relies on the Australian case *Culminating in LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 280 CLR 321, England and law in New Zealand See, eg, *R (Lumba) v Secretary of State for the Home Department* [2012] 1 AC 245 at [68], [207]; *R (Cart) v Upper Tribunal* [2012] 1 AC 663 at [110]; *R v Rochdale Metropolitan Borough Council, ex parte Cromer Ring Mill* [1982] 3 All ER 761 at 770m and in the context of the discretionary refusal of relief see discussion in *R (Plan B Earth) v Secretary of State for Transport* [2020] EWCA Civ 214 at [267]-[272] (in particular at [267], describing the common law position prior to statutory intervention as requiring that a court may refuse relief if “satisfied that the outcome would inevitably have been the same even if the public law error identified by the court had not occurred”); *Peters v Davison* [1999] 2NZLR 164 at 202 (“the error has to be one which affected the actual

⁶ Filed on 10 March 2026

²⁰ *Culminating in LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 280 CLR 321

making of the decision and affected the decision itself”(at footnote 21 of the respondent’s written submissions)

27. In so far as Nauru is concerned the English common law has application. Under The *Custom and Adopted Law Act 1971* the common law of England as at 31 January 1968 was adopted as law of Nauru – see s4(1).
28. S111 of the Supreme Court Act 2018 changed that position and the common law now continues to apply in Nauru except where it is inconsistent with any written laws.
29. So even if the appellant is correct in his assertion that the reference about state protection is an error it will still not affect the outcome of the Tribunal’s decision against the appellant.
30. The primary judge meticulously carried out the task of isolating and interpreting the integral part of the Tribunal’s reasoning from the immaterial parts and in our respectful opinion came to the correct conclusion that the reference to state protection was superfluous and immaterial to the outcome of the Tribunal’s decision.
31. The appeal is dismissed.

ORDER

32. The appeal is dismissed.

Dated this 10 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

