



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

Civil Appeal Number 23 of 2025
Supreme Court Civil Case No.44 of 2025

BETWEEN BR25 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: *BR25 v The Republic*

CATCHWORDS: APPEAL – Asylum seeker – Misunderstanding or misconstruction of evidence - Error of law - Interpretation of conflicting statements - Ambiguity in statement – Corroboration - Whether Tribunal decision to be reconstructed - Test for assessment of interpretation.

APPEARANCES

Mr Kenneally for the Appellant
Mr O'Shannessy for the Respondent

JUDGMENT

1. The appellant in this matter seeks to overturn the decision of the Supreme Court upholding the decision of the Refugee Status Review Tribunal (the Tribunal) which failed to recognise him as a refugee or that he was owed complementary protection, under the in the *Refugees Convention Act 2012* (the Act).
2. The ground of the appeal is that there was a misunderstanding or a misconstruction of evidence by the Tribunal which was subsequently upheld by the Supreme Court.
3. By way of procedural background, the appellant comes from Pakistan and arrived in Australia illegally in February 2024. Pursuant to an agreement between Australia and Nauru for determination of asylum seeker cases, he was sent to Nauru on 18 February 2024, where he exercised a right to apply for a Refugee Status Determination (RSD) under the Act.
4. The Secretary of the Department of Multicultural Affairs(the Secretary) examined his application and refused it. He made an application for review to the Tribunal, which upheld the Secretary's decision and his appeal to the Supreme Court subsequently failed.
5. That decision is now appealed with the appellant seeking that the matter be returned to the Tribunal for rehearing.
6. His case is that he has a well-founded fear of returning to Pakistan because of a dispute with a cousin over ancestral land ownership.
7. The dispute as we read the material was determined after a ruling or mediation by a Jirga, which is an assembly of tribal or village leaders traditionally established to resolve disputes such as that which was claimed to exist.
8. The Jirga's decision was not in the appellant's favour and he failed to follow its directions and stated that he could be punished for that, although no conclusive evidence was given about that claim.
9. The appellant claimed that he was assaulted and beaten up and so he left his home district and went to Gujrat (no distances between his home and Gujrat were given) and worked in his trade as a diesel mechanic.
10. It was there that he claimed an attempt was made on his life when two masked gunmen opened fire on the mechanic's yard he was working in.
11. His statements of what occurred is relevant to the Tribunal's decision-making.
12. Briefly they are that –
 - there were about 50 workers in the yard and he was working under a truck.
 - he said he observed, while standing, a masked gunman.
 - shots were fired at the truck he was under missing him but hitting the tyres.
 - he believed his cousins had hired the gunman.
 - he did not go to the police as he panicked.

13. That incident forms the basis for the appeal that the Tribunal misunderstood corroborative evidence associated with the shooting, and, but for the misunderstanding, such would have made a difference to the Tribunal's doubt of his narrative.
14. The evidence said to be corroborative was an affidavit allegedly coming from the appellant's employer.
15. It was before the Tribunal and it is in the documents before this Court.
16. It is six paragraphs long.
17. It identifies the maker of the statement as the owner of the workshop and gives the workshop's location and that the appellant was working for him at the workshop on 18 September 2023.
18. The relevant paragraphs of the affidavit state:
 - [4] That dated 18-09-2023 at 3.00pm some unknown persons started firing on my worker [appellant named] at my workshop. At that time [appellant named] was doing repair work under the truck, due to the bullets, both the tyres of the truck burst, but [appellant named] was safe and managed to escape from there. And the unknown persons escaped from there at the same time.
 - [5] That I submitted the application at the concerned police station at the same time Let (sic) it be investigate (sic) that there has been firing on my worker [appellant named] in my workshop. Later, the police asked [appellant named] to appear in the police station, but we did not find [appellant named] which is why we did not follow the said application.
19. The Tribunal did not ignore the existence of this affidavit, despite the fact that the bottom was cut off, and the signature and witness signatures were not apparent.
20. Keeping in mind that the affidavit was produced as corroborative evidence, the Tribunal, after hearing the appellant and questioning him, stated in its reasons that it had concerns about the accounts being given.
21. The concerns were outlined in the form of unanswered questions, being: How would someone driving-by know the appellant was under a particular vehicle given there were 50 workers, and vehicles, in the yard and he was not visible; if he was immobilised under a vehicle, why the assassin would not just walk up to the vehicle and shoot him rather than shoot in the general vicinity; why was there not a more targeted attack since the appellant was standing at some stage and observed a masked gunman and a claim that the gunman must have been watching the premises. The Tribunal concluded that these aspects of the case lacked credibility.
22. Further, the Tribunal noted the evidence about the appellant not going to police with changes as to his reasons. He initially said he was too panicked and then told the Tribunal that it was primarily because the police would ask him questions and hassle him.

23. On these issues, the Tribunal said it did not accept that a victim of a shooting would not report it to police simply because the police would have asked too many questions.
24. The Tribunal also raised issues about the affidavit and noted that some of the contents had been inconsistent with the appellant's account to the Tribunal, but importantly, the Tribunal was concerned about his contact with his former employer to obtain the affidavit, yet the employer stated in the affidavit he had been unable to contact him.
25. The Tribunal said the statement appeared to be made in March 2024 specifically for the RSD application, and it was unclear how the appellant had actually obtained the statement.
26. The Tribunal had further concerns that it was not able to test the maker of the affidavit.
27. In submission, counsel for the appellant said a misunderstanding of the evidence is an error of law and that the affidavit had been misunderstood, and an incorrect interpretation put on its statements.
28. The Tribunal found that the wording was ambiguous as to whether the employer could not contact the appellant again when the appellant had obviously contacted the employer to produce the affidavit.
29. The Tribunal found this to be an inconsistency in the appellant's case.
30. Counsel submitted that the ambiguity did not provide a sound basis for the finding of the Tribunal because as it was significant corroborative evidence, it went to a central point of the appellant's claim, the shooting incident giving rise to the well-founded fear.
31. Counsel submitted that it was not open to the Tribunal to determine the matter in the way it did and so misunderstood the evidence.
32. He stated that the wording in the affidavit – that “we did not find [appellant]” could or should not be read or interpreted as a continuing impossibility of finding or contacting him.
33. He said the Tribunal extension of any ambiguity in the affidavit was outside the bounds of how one could understand it. He said it is written in the past tense and the Tribunal used it to say the appellant and employer would continue to be out of contact but nothing in the language suggested that. He said the inability to find the appellant was about the police investigation, not other contact between the appellant and the employer. He then said the word find did not mean could no contact in the future.
34. He said the wrong inferences have been drawn as the affidavit was confined only to the police issue.
35. As to what was referred to as materiality of the affidavit, and this means the Tribunal's decision rejecting its utility — the question for the court was – would an interpretation as is being urged have made a difference to the decision?

36. As to the approach we should take, we were referred to a specific statement by the High Court of Australia in *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs and Another*¹, and urged to adopt the process stated there, particularly highlighted in the last two lines of paragraph 29.
37. The paragraph states (ignoring references to paragraphs of an Act irrelevant to this proceeding):
- [29] Having found the Tribunal so erred, the Full Court then identified other aspects of the Tribunal's reasons as a basis for assuming that the Tribunal would have adopted a different process of reasoning to the same end, and, on that basis, concluded that the error was not material. By way of example, the full-court reasoned that, 'even if the Tribunal had concluded that subparagraph (a) was entirely irrelevant and moved on', the Full Court did not consider that there was "is a realistic possibility" that the Tribunal could have found the appellant's conduct to be merely "serious" in considering the nature and seriousness of his conduct under paras 8.1(2)(a) and 8.1.1(1), or that the weighing exercise under para paragraph 8.1.1(1) could have had a "favourable outcome" for the appellant even if the Tribunal did assess his conduct as "serious". Both of these findings involved the Full Court making assumptions about how the Tribunal would have undertaken the weighing exercise of the matters in para 8.1.1(1). **Such approaches should not be adopted. A reviewing court does not engage in a review of the merits of the decision, reconstruct a decision-making process, rework the apparent basis upon which a decision has been made, or rewrite the reasons for decision** (Attorney-General (NSW) v Quinn (1990) 170 CLR 1 at 35-6, 38; 93 ALR 1 at 25; SZMTA at [48], [95]; MZAPC at [51].
38. The respondent Republic opposed this submission, firstly because it held the position that the Tribunal did not make an error, and secondly, because it opposed the adoption of a test to be applied to all such errors, when this jurisdiction had dealt with such on a case-by-case basis.
39. We will deal with the findings of the case first.
40. Counsel for the respondent stated that the assessment for the appellant by the Tribunal was devastating.
41. He took the Court to the Tribunal's findings concerning shifting accounts of whether the appellant returned to Gujrat and his home area after the shooting, his account of being under a vehicle when the shooting occurred when 50 workers were in the yard, the question of how the assassin would know he was under the vehicle and how he observed a shooter's covered face standing up. These issues went to the appellant's lack of credibility because of conflicting accounts.
42. But the Tribunal also found that failure to go to police after being shot at, the story changing from one of panic to not reporting it because the police would ask too many questions, was also a fact going to lack of credibility.

¹ [2024]HCA12

43. Then of course the production of the affidavit raised issues about what was said - that the appellant could not be contacted when it was obvious there had been communication between him and his former employer. The Tribunal was concerned it could not test the maker of the document, the maker not able to be produced to help clear up ambiguities.
44. Counsel relied on *AS25 v Republic of Nauru*², where the Court stated at paragraph 49:
- “[49] Whether he changed his evidence because he was told the date of the deregistration or not is an issue which requires no consideration, as the totality of the Tribunal's reasoning is apparent, even without the strand of evidence, the decision would, with a high degree of probability, not have changed. An error of fact has occurred then which does not amount to an error of law, applying Mason CJ's test as stated in the *Bond* case”.
45. The reference there is to *Australian Broadcasting Tribunal v Bond*³ where Mason CJ stated:
- A decision does not ‘involve’ an error of law unless the error is material to the decision in the sense that it contributes to it so that, but for the error, the decision would have been, or might have been, different.
46. The *Bond* decision, also recorded in AS25 referred to further explanation of this type of error as given by Toohey and Gaudron JJ:
- For an error of law to be involved in the decision, something more in the mere occurrence of error is necessary. The error must have contributed to the decision in some way, or, at the very least, it must be impossible to say that it did not so contribute. Conversely, an error is not involved in a decision if it did not contribute to the decision, or if the decision must have been the same, regardless of the error. Thus, to show that an error of law is involved in the decision, it is necessary, at the very least, to show that the decision may have been different if the error and not occurred.
47. Counsel's case was that as no error occurred, the reasoning in AS25 was appropriate to apply in this case. He also stated the AS25 decision did not move the burden of proof of error from the appellant to the respondent, and in that he is correct.
48. Such application would allow the Tribunal decision to be examined as a whole, as well as the judgment of the primary judge, and the question asked whether the affidavit material from the alleged employer was so persuasive and cogent that on a different interpretation, the decision would have been different?
49. To understand the context of the question, the nature of the affidavit has to be understood.
50. It is a document apparently produced to assist the appellant in his application.
51. That it was constructed in the manner it was is a fact which the Tribunal had to deal with.

² [2026] NRCA 8

³ (1990) 170 CLR 321 at 353

52. That it may have created ambiguities, because it seemed to conflict with statements of the appellant, was a matter of the affidavit's construction.
53. It had to be considered and it was, and the Tribunal made a factual decision as to its meaning in relation to what the appellant was claiming.
54. In our view, the premise of the appellant's submission, to follow the *LPTD* case, is misplaced.
55. The appellant states that the affidavit is strong corroborative evidence which supports the appellant's claims of being shot at.
56. That brings us to consideration of what is corroborative evidence.
57. Of corroboration, in *BRS v R*⁴ Brennan CJ stated of corroboration, quoting *R v Kilbourne*⁵ per Lord Reid:

"There is nothing technical in the idea of corroboration. When in the ordinary affairs of life one is doubtful whether or not to believe a particular statement one naturally looks to see whether it fits in with other statements or circumstances relating to the particular matter; the better it fits in, the more one is inclined to believe it. The doubted statement is corroborated to a greater or lesser extent by the other statements or circumstances with which it fits in."

And this Court said in *Doney v The Queen*⁶:

"The essence of corroborative evidence is that it 'confirms', 'supports' or 'strengthens' other evidence in the sense that it 'renders [that] other evidence more probable': *R v Kilbourne*".

58. In a legal proceeding, the affidavit here would have been inadmissible by way of proof of originality, proof of signature, where the appellant was physically placed, for being partly hearsay evidence especially in relation to shots being fired at the appellant and claims of the state of a complaint to police.
59. While the Tribunal as an administrative body is not hindered by the rules of evidence, and admitted the affidavit to discharge its duty of fairness in terms of natural justice to the appellant as stated in s22 of the Act, it gave every opportunity to the appellant to prove his case to the satisfaction of the Tribunal.
60. So while the affidavit would not have been inadmissible in a court, in our view the Tribunal was not obliged to accept the document, but upon doing so, considered it and could not escape what was said in *Kilbourne* – that "in the ordinary affairs of life [when] one is doubtful whether or not to believe a particular statement one naturally looks to see whether it fits in with other statements or circumstances relating to the particular matter; the better it fits in, the more one is inclined to believe it".

⁴ [1997] HCA 47; (1997) 191 CLR 275; (1997) 148 ALR 101; (1997) 71 ALJR 1512 (25 September 1997)

⁵ [1973] AC 729 at 758

⁶ [1990] HCA 51; (1990) 171 CLR 207 at 211

61. As to the interpretation, if the Tribunal was urged to take the words that the appellant could not be found was only for the police investigation, then it was always open that another interpretation could be considered since there was an ambiguity in the total circumstances existing, given that the appellant found the employer to put together a statement which could be used in a proceeding such as this.
62. The appellant was then in a self-caused situation that he put forward his evidence, partial and incomplete, and ran the risk which eventuated, that the Tribunal had doubt about the authenticity of the document.
63. But would the Tribunal have come to the same conclusion of not accepting the appellant's story without the document?
64. In our view that is a strong probability given the other conclusions based on the decision the Tribunal arrived at. However, we do not need to go that far in this case, because the appellant had also considered that an adverse conclusion may be reached about his claims, which set him on the path of producing what was called corroborative evidence, to bolster his case.
65. The evidence was not corroborative – it was a clumsy attempt merely to bolster a weak case – and no error has occurred.
66. On that basis we dismiss the appeal.
67. We now want to deal with a legal issue raised in relation to the use of the case *LPTD* produced for the appellant's case and whether we adopt it.
68. As to materiality, counsel for the respondent put that the Republic had studiously avoided any attempt to import into this jurisdiction all of the "ink" used in Australia as to how materiality works. In other words, he was referring to numerous Australian cases dealing with the issue. He said there are several reasons as to why, including that those cases came from a jurisdiction where the question was one of jurisdictional error. He said the authorities there on materiality were in a jurisdiction where it was not enough to show an error of law, but that a claimant must demonstrate that the error was so profound that that it displaced or denied the decision-maker's jurisdiction. He submitted it came from a situation where prerogative relief was sought, available only where decisions were made without jurisdiction, which is not the context of Nauruan law. He said the court is a statutory body and the Supreme Court considers the law as stated in the Refugees Convention Act. He said there is no need in this jurisdiction for a litigant to establish that a particular error was so profound that it deprived the Tribunal of its jurisdiction.
69. He submitted that a litigant must show a point of law or error of law. Once that is established, there is no additional burden on a litigant to show a particular error is material in the sense as used in the Australian jurisdiction.
70. He said there may from time to time be a case where an error of law is established and the Republic will come before the Supreme Court and say that instead of remitting the matter it should nevertheless affirm the Tribunal decision. That is a power under s44 of

the Act. He said the argument is a confusion with the discretionary power on materiality in the Australian jurisdiction.

71. He said the argument put on materiality, by way of reliance on *LPTD*, was a request for prerogative relief, and that was not asked for.
72. Both submissions were short in scope on this issue and given our view of the affidavit and the view of the Tribunal, the choice of consideration as between the application of *LPTD* and the law as so far developed in Nauru is not an issue we need to take further, but to say, issues of materiality depend on the identification of an error first.

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

