



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: D1/2025
File Title: Badari & Ors v. Minister for Housing and Homelands & Anor
Registry: Darwin
Document filed: Form 27F - Applicants' Outline of oral argument (D1/2025)
Filing party: Applicants
Date filed: 03 Sep 2025

Important Information

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IN THE HIGH COURT OF AUSTRALIA

DARWIN REGISTRY

APPLICATION FOR SPECIAL LEAVE TO APPEAL FROM THE FULL COURT OF THE
SUPREME COURT OF THE NORTHERN TERRITORY (D1/2025)

BETWEEN:

Asher Badari

First Applicant

Ricane Galaminda

Second Applicant

Lofty Nadjamerrek

Third Applicant

Carmelena Tilmouth

Fourth Applicant

and

Minister for Housing and Homelands

First Respondent

Chief Executive Officer (Housing)

Second Respondent

APPLICANTS' OUTLINE OF ORAL SUBMISSIONS

Part I: This outline is in a form suitable for publication on the internet.

Part II: Outline of propositions intended to be advanced in oral argument

1. On 1 February 2023, the First Respondent made a purported determination (**Fourth Determination**) under s 23 of the *Housing Act 1982* (NT) (**Determination power**). The Applicants challenged its validity (**Fourth Determination proceeding**). By consent, one aspect of that challenge was referred by the Chief Justice of the Northern Territory to the Full Court of the Supreme Court of the Northern Territory pursuant to s 21(1) of the *Supreme Court Act 1979* (NT) (JBA 123). Only the application ‘for the declaration numbered 1 [was] referred’ (CAB 48, 204). That application challenged both the Fourth Determination, as well as policy, both of which effected a rent increase (CAB 45).
2. By reason of a changed factual landscape, the parties decided that the referral was no longer prudent and so, at the start of the hearing on 15 November 2023, they jointly invited the Full Court to decline to accept the referral. The Court did so orally, and gave confirmation in writing after the hearing (CAB 409).
3. Notwithstanding, and not having heard from either party further, the Full Court then gave reasons for judgment by which it dismissed ‘that particular claim for relief’ (CAB 68[3], 169-170[160]) as it concerned only the Fourth Determination and s 41 of the *Residential Tenancies Act 1999* (NT) (**RTA**). The Full Court then made an order which, on its face, dismissed the whole of the Fourth Determination proceeding (CBA 185).
4. Those orders should be construed in light of the reasons, adopting the approach supported by the weight of intermediate appellate court authority (JBA 777).¹ So construed, the orders only dismissed the referred aspect of the Fourth Determination proceeding as it concerned the Fourth Determination. The orders did not dismiss the challenge to policy by reference to s 41 of the RTA, for which the referral was already declined.
5. Special leave should be granted because it is in interests of the administration of justice, as the Respondents’ agreement to orders in this Court indicated (CAB 446-447). The appeal should be allowed because the Full Court erred, in particular (but not only) by determining part of the proceeding against the interests of the Applicants without affording them a hearing on the referred aspects of the Fourth Determination proceeding (JBA 880).²
6. The Fourth Determination proceeding has continued utility on the previously-referred aspect because it could be resolved in the Applicants’ favour in light of any or any

¹ *AVS Group of Companies Pty Ltd v Commissioner of Police* (2010) 78 NSWLR 302, [98]-[102].

² *DWN042 v Republic of Nauru* (2017) 92 ALJR 146, [20]-[21].

combination of changed facts, further evidence including that which results from any discovery application (see, by contrast, CBA 116-117), and clarity as to the proper approach to the statutory scheme arising from this Court's judgment in D7/2025.

DATED: 3 September 2025



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