

HIGH COURT OF AUSTRALIA

BELL, KEANE AND GORDON JJ

QLN146

APPELLANT

AND

REPUBLIC OF NAURU

RESPONDENT

QLN146 v Republic of Nauru

[2018] HCA 42

11 September 2018

M26/2018

ORDER

Appeal dismissed with costs.

On appeal from the Supreme Court of Nauru

Representation

C M Harris QC with N M Wood for the appellant (instructed by Grindal & Patrick)

C L Symons for the respondent (instructed by Republic of Nauru)

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

QLN146 v Republic of Nauru

Nauru – Appeal as of right from Supreme Court of Nauru – Refugees – Where Secretary of Department of Justice and Border Control determined appellant not refugee and not owed complementary protection – Where Refugee Status Review Tribunal affirmed Secretary's determination – Where Tribunal made adverse findings as to credibility – Whether error in Tribunal's reasons.

Words and phrases – "appeal", "credibility", "error".

Refugees Convention Act 2012 (Nr).

Convention relating to the Status of Refugees (1951) as modified by the Protocol relating to the Status of Refugees (1967).

1 BELL J. I will ask Justice Gordon to give the first judgment.

2 GORDON J. The Refugee Status Review Tribunal ("the Tribunal") affirmed a determination of the Secretary of the Department of Justice and Border Control that the appellant was not recognised as a refugee under the Convention relating to the Status of Refugees (1951) as modified by the Protocol relating to the Status of Refugees (1967) and was not owed complementary protection under the *Refugees Convention Act 2012* (Nr).

3 The Tribunal rejected the appellant's claim that he had been targeted by the Sri Lankan authorities for supporting the Liberation Tigers of Tamil Eelam ("the LTTE"). Under the heading "[t]argeting of the applicant", the Tribunal addressed five separate bases for scepticism as to the appellant's claims. That section of the Tribunal's reasons for decision concluded in the following terms:

"Taking these matters together the Tribunal ... does not accept that the [appellant] was targeted by the authorities for supporting the LTTE, as he claims. The Tribunal does not accept that his house was visited by army and paramilitary personnel who were searching for him, that his wife was assaulted by such people, that he went into hiding in Achuveli [sic] to avoid capture or that it was for such a reason that he and his family travelled to Colombo and later left Sri Lanka to go to India, paying large bribes to be able to do so. The Tribunal does accept that he was arrested and briefly detained in Colombo in December 2007, and that he suffered a physical assault while in custody, but it finds that his release after a short period is inconsistent with his claim to have been targeted by the authorities for supporting the LTTE.

In making these findings the Tribunal has had regard to the representative's oral submissions to the effect that people do not always act rationally, and the fact that they may do things which seem odd does not in itself mean their account is untrue. Even giving these cautionary remarks their full weight, however, the Tribunal is not satisfied that the concerns about the credibility of the [appellant's] claims which it put to him at the hearing can be dismissed, as the representative suggested, as simple or mere speculation. The Tribunal does not accept, in conclusion, that the [appellant] was of any adverse interest to the police, military or other authorities at the time he left Sri Lanka."

4 The appellant unsuccessfully appealed to the Supreme Court of Nauru.

5 The appellant now appeals to this Court as of right. The appellant contends that the issue arising on appeal is narrow. The appellant does not challenge each of the five identified bases. The appellant's complaint concerns three paragraphs ([37]-[39]) addressing the second basis – the Tribunal's scepticism as to the appellant's claim of the means by which he fled his home town in Sri Lanka and, in particular, a finding by the Tribunal that it was

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"difficult to believe" that the appellant would have been able to bribe a local army commander to assist him to flee.

6 The appeal should be dismissed.

7 First, as is always the case, what is said in the Tribunal's reasons must be understood in the context of the whole of the reasons. Examining sentences, or parts of sentences, in isolation is apt to lead to error. Here, the Tribunal's reasons record a number of reasons for doubting the truth of the appellant's claim that he had been targeted by the Sri Lankan authorities for supporting the LTTE. Put in different terms, the evidence adduced by the appellant before the Tribunal and the Tribunal's assessment of that evidence in paras [37]-[39] of the Tribunal's reasons was not dispositive of the review or the decision of the Tribunal.

8 Second, adverse findings as to credibility are a matter for the Tribunal and considerable caution must be exercised before reaching the conclusion that adverse findings as to credit expose legal error. As the Tribunal's reasons for decision stated and the transcript of the hearing before the Tribunal recorded, during the course of the hearing the Tribunal put its concerns about the bribery allegations to the appellant but the Tribunal was not satisfied that its concerns had been assuaged and could simply be dismissed.

9 Third, in addition to putting its concerns about the bribery allegations to the appellant during the hearing, the Tribunal addressed that evidence in its reasons. The Tribunal stated that it did not underestimate the extent of corruption in Sri Lanka, even during the war years, and that it was willing to accept that the appellant may have had access to some wealth. Notwithstanding those matters, taking into account the totality of the five separate bases identified, the Tribunal did not accept the appellant's claims that he was targeted by the Sri Lankan authorities for supporting the LTTE.

10 Fourth, in substance, the appellant contends that the Tribunal should have made further findings that he fled his home town in Sri Lanka and that the appellant would have been able to bribe a local army commander to assist him to flee. The Tribunal was not obliged to make such findings given its general scepticism as to the appellant's account. To assert that it was so obliged is impermissibly to invite review as to the merits of its decision.

11 Finally, the appellant's argument in this Court focused on an asserted error in the Supreme Court's acceptance that the Tribunal found that the appellant may have bribed an army commander but its failure to find that the commander would not accept a bribe. That argument overlooks the Supreme Court's analysis, which is that the Tribunal did not make a precise finding about whether a bribe was made in circumstances where the inconsistency which the Tribunal identified was "on the one hand hiding out from authorities and on the other hand making a bribe to an army commander".

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For those reasons the appeal should be dismissed with costs.

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13 BELL J. I agree.

14 KEANE J. I agree.

