

# HIGH COURT OF AUSTRALIA

GAGELER CJ,  
GORDON, EDELMAN, STEWARD AND GLEESON JJ

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ASHER BADARI & ORS

APPLICANTS

AND

MINISTER FOR HOUSING AND  
HOMELANDS & ANOR

RESPONDENTS

*Badari v Minister for Housing and Homelands*  
[2025] HCA 48  
*Date of Hearing: 3 September 2025*  
*Date of Judgment: 3 December 2025*  
D1/2025

## ORDER

- 1. Special leave to appeal is granted.*
- 2. The appeal is allowed.*
- 3. Order 2 made on 24 January 2025 by the Court of Appeal and the Full Court of the Supreme Court of the Northern Territory be set aside.*
- 4. There be no order as to costs of the application for special leave to appeal and resulting appeal.*

On appeal from the Supreme Court of the Northern Territory

## Representation

M L L Albert with M A Benn for the applicants (instructed by Australian Lawyers for Remote Aboriginal Rights)



C L Lenehan SC with R S Amamoo for the respondents (instructed by Solicitor for the Northern Territory)

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



## CATCHWORDS

### **Badari v Minister for Housing and Homelands**

Practice and Procedure – Jurisdiction – Jurisdiction of the Full Court of the Supreme Court of the Northern Territory on referral under ss 15 and 21 of *Supreme Court Act 1979* (NT) – Where application for declaration referred for determination by the Full Court – Where the Full Court declined to accept the referral – Where parties subsequently made no submissions to the Full Court regarding application for declaration – Where the Full Court subsequently purported to order that application for declaration be dismissed – Whether the Full Court had jurisdiction to order dismissal of application – Whether regard may be had to extrinsic material in interpreting the Court's order.

Words and phrases – "decline to accept referral", "determination", "extrinsic material", "jurisdiction", "order", "public housing", "referral", "remote communities", "rent", "special leave to appeal", "tenant".

*Housing Act 1982* (NT), s 23.

*Housing Regulations 1983* (NT).

*Residential Tenancies Act 1999* (NT), s 41.

*Residential Tenancies Regulations 2000* (NT), Sch 2 cl 2.

*Supreme Court Act 1979* (NT), ss 15, 18, 21.



1 GAGELER CJ, GORDON, EDELMAN, STEWARD AND GLEESON JJ. The applicants seek special leave to appeal from an order of the Court of Appeal and the Full Court of the Supreme Court of the Northern Territory (hereinafter the "Court of Appeal") given on 24 January 2025. On 9 May 2025, the application for special leave was referred to a Full Court to be heard with the related matter in *Badari v Minister for Territory Families and Urban Housing* ("*Badari* (D7/2025)"), which concerned the validity of three successive determinations made by the minister responsible for the *Housing Act 1982* (NT) (the "Relevant Minister"), pursuant to s 23 of the *Housing Act* and the *Housing Regulations 1983* (NT), as to the amount of rent payable by tenants of public housing. Although this application raises distinct and separate issues of jurisdiction, these reasons should be read together with the reasons of this Court in that related appeal.<sup>1</sup>

2 The applicants are tenants of three houses located in remote communities in the Northern Territory. They are also the appellants in *Badari* (D7/2025).

3 After the applicants had filed their notice of appeal to the Court of Appeal on 7 December 2022 in relation to the first three determinations (the "COA Appeal"), the Relevant Minister made a further determination fixing rent payable pursuant to s 23 of the *Housing Act* on 1 February 2023 (the "Fourth Determination"), which in substance excluded a number of communities from the effects of the previous determinations. Since the applicants' communities were not excluded, they commenced a new proceeding in the Supreme Court of the Northern Territory on 31 March 2023, in which they challenged the validity of the Fourth Determination (the "Fourth Determination Proceeding"). Part of the relief sought was the following declaration which came to be described as "declaration numbered 1":

"A declaration of right pursuant to s 18(1) of the *Supreme Court Act 1979* (NT) that:

- a. part (b) of the Determination of Rent Payable for Dwellings dated 1 February 2023 made by the first defendant ... purportedly pursuant to s 23 of the *Housing Act 1982* (NT) does not give rise to any rent increase; and/or
- b. any rent increase by way of an increase in the percentage of income used to set the rent to be paid is and was unlawful

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1 [2025] HCA 47.

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having regard to s 41 of the *Residential Tenancies Act* 1999 (NT) for those tenancy agreements in which the operative rent quantification term is that, or is the same as that, provided in clause 2(2) of Schedule 2 of the *Residential Tenancies Regulations* 2000 (NT)."

4 On 30 August 2023, Grant CJ made an order pursuant to s 21(1) of the *Supreme Court Act* 1979 (NT) that the application for declaration numbered 1 be referred for determination by the Full Court (the "Referral"). On 15 November 2023, both the COA Appeal and the Referral were called on for hearing before the Court of Appeal comprising Grant CJ, Barr J and Huntingford AJ. At that hearing, both the applicants and the respondents submitted that the Court of Appeal should decline to accept the Referral. Grant CJ then stated that he rejected his Honour's own reference. That evening, the lawyers for all parties received an email from the Associate to Grant CJ, which amongst other things said "[t]he reference to the Full Court is declined pursuant to s 21(2) of the *Supreme Court Act* (NT)". Although no formal order was made declining to accept the Referral, it was not in dispute that the statement by Grant CJ and the note to the parties was sufficient to decline the Referral under s 21(2) of the *Supreme Court Act*. The parties also proceeded in the Court of Appeal on that basis.

5 No oral submissions were made to the Court of Appeal about the Fourth Determination Proceeding. The Court of Appeal delivered its reasons on 24 January 2025.<sup>2</sup> The Court of Appeal purported to decide not just the Referral, but, on one view, all of the relief sought in the Fourth Determination Proceeding. The reasons stated as follows:<sup>3</sup>

"As stated at the outset, the second matter to be determined is an adjunct to the appeal from the decision of the trial judge. It is an application for judicial review seeking, amongst other relief, a declaration that the fourth Determination of Rent Payable for Dwellings dated 1 February 2023 made in purported pursuance of s 23 of the *Housing Act* was *ultra vires* by operation of s 41 of the [*Residential Tenancies Act* 1999 (NT)] and cl 2(2) of Sch 2 of the [*Residential Tenancies Regulations* 2000 (NT)]. It raises the same issues as have been determined above for the purpose of the appeal, and attracts the same findings."

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2 *Badari v Minister for Territory Families and Urban Housing* (2025) 393 FLR 73.

3 *Badari v Minister for Territory Families and Urban Housing* (2025) 393 FLR 73 at 124 [160].



3.

6 The Court of Appeal then made the following order dismissing the application for judicial review of the Fourth Determination:

"The application for judicial review of the Fourth Determinations in proceedings 2023-01110-SC is dismissed."

It is that order which is the subject of the present application for special leave.

### **The application for special leave**

7 The application for special leave contains one proposed ground of appeal, that the Court of Appeal erred in giving judgment and orders dismissing the Fourth Determination Proceeding, as the Court had earlier "declined to accept" the Referral and the parties were not heard on the possibility that that proceeding would be re-accepted and determined.

### **The Court of Appeal did not have jurisdiction**

8 Section 15 of the *Supreme Court Act* relevantly provides that "[t]he jurisdiction of the Court, other than its appellate jurisdiction, is exercisable ... by the Full Court; [or] where it is not expressly provided that the jurisdiction of the Court shall be exercised by the Full Court, by one Judge ...". Section 15 is to be read with s 21(1), which permits the Judge hearing a proceeding "not being a proceeding in the Court of Appeal ... [to] refer that proceeding or part of that proceeding to the Full Court". The Full Court may accept, decline, or accept in part only, a reference made pursuant to s 21(1).<sup>4</sup>

9 It was not in dispute that the Court of Appeal was relevantly the Full Court for the purposes of s 15 of the *Supreme Court Act*. If the Court had accepted the Referral made by Grant CJ, then the Court would have had jurisdiction to hear and determine the application for declaration numbered 1. However, pursuant to s 21(2)(b) of the *Supreme Court Act*, the Court "declined" to accept that Referral. It follows that the Court of Appeal did not have jurisdiction to hear and determine the relief sought. Special leave should be granted and the resulting appeal should be allowed. The parties agree that those orders should be made. The parties also agree that they should each bear their own costs of the special leave application and resulting appeal.

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4 *Supreme Court Act*, s 21(2).

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10 The Fourth Determination Proceeding thus remains extant and will need to be heard and determined by the Supreme Court of the Northern Territory, unless otherwise resolved.

### **The order made by the Court of Appeal – extrinsic material**

11 Given that what was the subject of the Referral was only one of the grounds of relief in the Fourth Determination Proceeding, it was unclear whether the order of the Court of Appeal was confined to declaration numbered 1 or whether it extended to all of the relief sought by the applicants in that proceeding.

12 It is strictly unnecessary to resolve this ambiguity. On any view, as explained above, the Court of Appeal lacked jurisdiction to make the order. Court orders should be drafted in clear and unambiguous terms, so that they can be complied with, and, if necessary, enforced, without the need to consider anything but the text of the order.<sup>5</sup> But, as is generally the case with the interpretation of written instruments, there is no threshold requirement before extrinsic context can be considered. Indeed, where an order is ambiguous it may be necessary to consider the reasons of the court so that the court order gives effect to the judgment, being the source of the order.<sup>6</sup> And, in a given case, an examination of a wider set of materials may be needed; this might include looking to "the pleadings and, if necessary, the evidence and how the case was conducted".<sup>7</sup>

### **Relief**

13 The following orders should be made:

- a. Special leave to appeal is granted.
- b. The appeal is allowed.

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5 This is especially so with injunctions: *Hogan v Hinch* (2011) 243 CLR 506 at 546 [58]; *ICI Australia Operations Pty Ltd v Trade Practices Commission* (1992) 38 FCR 248 at 259-262.

6 *Doyle v Commissioner of Police (NSW) [No 2]* (2020) 281 A Crim R 357 at 371 [58] and the authorities cited.

7 *Owston Nominees No 2 Pty Ltd v Branir Pty Ltd* (2003) 129 FCR 558 at 569 [27] (citations omitted).

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*Edelman*    *J*  
*Steward*    *J*  
*Gleeson*    *J*

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- c.     Order 2 made on 24 January 2025 by the Court of Appeal be set aside.
- d.     There be no order as to costs of the application for special leave to appeal and resulting appeal.