IN THE NAURU COURT OF APPEAL
AT YAREN
CIVIL APPELLATE JURISDICTION

Refugee Appeal No. 1 of 2025
Supreme Court Refugee Appeal Case No. 3 of 2024

BETWEEN

AC 24

APPELLANT

AND

THE REPUBLIC OF NAURU

RESPONDENT

BEFORE: **Justice R. Wimalasena, President**
Justice Sir A. Palmer
Justice K. David

DATE OF HEARING: **28 August 2025**

DATE OF JUDGMENT: **05 September 2025**

CITATION:	**AC 24 v The Republic of Nauru**
KEYWORDS:	Refugee; fresh ground of appeal
LEGISLATION:	s. 26 & 48 Nauru Court of Appeal Act 2018; Rule 36 Nauru Court of Appeal Rules 2018
CASES CITED:	WET 054 v Th Republic of Nauru [2023] NRCA 8

APPEARANCES:

COUNSEL FOR the Appellant:	Mr. A. Aleksov
COUNSEL FOR the Respondent:	Mr. R. O'shannesy

JUDGMENT

1. This is an appeal against the Supreme Court judgment delivered on 28 April 2025 affirming the decision of the Refugee Status Review Tribunal (Tribunal) made on 25 October 2024.

2. The Appellant in this appeal is a Bangladeshi national. In 2016 he travelled to Malaysia for two years on a work visa and returned to Bangladesh in 2019. In 2021 he departed Bangladesh to work in Dubai for two years and returned to Bangladesh in early 2023. On 25 September 2023 he travelled to Indonesia. Later he left Indonesia by boat and arrived in Australia in early November 2023. On 24 November 2024 he was transferred to Nauru.

3. The Appellant made an application for Refugee Status Determination on 17 January 2024 to be recognized as a refugee or a person to whom the Republic

of Nauru owes complementary protection under its international obligations. On 14 June 2024, the Secretary for Multicultural Affairs (the Secretary) determined that the Appellant was not a refugee and was not complimentary protection under the Refugee Convention Act 2012 (Refugees Act).

4. On 21 June 2024, the Appellant made an application to the Tribunal to review the Secretary's determination. On 25 October 2024, the Tribunal affirmed the decision of the Secretary.

5. The Appellant filed a Notice of Appeal to the Supreme Court on 12 November 2024 to appeal against the Tribunal decision and an amended Notice of Appeal on 16 January 2025. On 28 April 2025 the Supreme Court dismissed the appal and affirmed the decision of the Tribunal. Being aggrieved by the Supreme Court Judgment, the Appellant filed a Notice of Appeal in the Nauru Court of Appeal on 27 May 2025.

6. The Notice of Appeal sets of the following Grounds of Appeal:

> "The primary judge erred by failing to find that:
>
> 1. The Tribunal failed to consider a substantial submission made by the Appellant, which supplemented or modified a submission a made in writing.
>
> (a) The Appellant's submissions made oral submissions at the hearing that supplemented or modified the earlier written submission that acknowledged that low-level BNP supporters were unlikely to be of interest to the Bangladesh authorities.
>
> (b) The Tribunal failed to have regard to the modification of the written submission or the supplementary oral submissions.
>
> 2. The Tribunal failed to consider whether the Appellant may resume his political participation (even at the low accepted by the Tribunal) on

return to Bangladesh, and if so, whether he faced a reasonable possibility of harm, separate from whether he would have a raised profile.

3. The Tribunal failed to take in to account or give proper consideration to evidence that was before it.

(a) The Tribunal had before it a report by DFAT titled 'DFAT Country Information Report Bangladesh' dated 30 November 2022 (the DFAT Report) and relied on that report.

(b) The Tribunal failed to take into account the directly relevant information at [3.82] - [3.84] of the DFAT Report to the effect that DFAT assessed that low-level BNP supporters could be targeted with criminal charges, including false or vexatious charges."

7. Subsequently, on 16 July 2025 the Appellant filed another document, without a title, setting out the following two grounds of appeal:

1. The trial judge erred in finding that the Tribunal had accurately understood the appellant's submissions, finding (incorrectly) that the appellant had submitted that low-level members and supporters including the appellant are unlikely to be of interest to authorities.
2. The trial judge erred in failing to find that the Tribunal failed to consider whether the appellant was entitled to complementary protection, including from violence in demonstrations not specifically targeted the appellant, on the basis of the facts it accepted.

8. Before we go any further, this should be noted. It appears that the Appellant intended to amend the grounds of appeal by filing that document. However, the Respondent brought to the Court's attention that the intended amendment was not done as required by the law. The Nauru Court of Appeal Act 2018 (Court of Appeal Act) and the Court of Appeal Rules (Rules) specifically

provide the procedure for amending grounds of appeal. According to section 48(2) of the Court of Appeal Act, an amended notice of appeal must be filed by way of a supplementary notice of appeal, which should be in Form 24 as prescribed by Rule 36. Parties must comply with the Rules (see Rule 5), and the Court has the power to strike out an appeal for non-compliance with the Rules or the provisions of the Act (see section 26). If a supplementary notice of appeal is filed at least 14 days before the date fixed for hearing, no leave is required. In this case, the Appellant filed the document well before the 14-day period. In any event, in the interests of justice, we will treat this as a supplementary notice of appeal for the purposes of this appeal.

9. The appeal was taken up for hearing on 28 August 2025. We have considered the written submissions and the oral arguments made by the parties.

Ground 1

10. The Appellant submitted that the Tribunal misunderstood the nature of the submissions made with regard to the Appellant's situation in view of the country information. The written submission tendered at the Tribunal had acknowledged that some country information suggested low level members of the BNP were unlikely to be of interest to the authorities. The Appellant argued that this was not put forward as a concession. Instead, the Appellants argument was, that it was put forward to persuade the Tribunal that, given recent political changes in Bangladesh, his circumstances placed him at greater risk of harm than the general country information indicated. The Appellant's counsel referred to the relevant portion of the submissions filed, dated 'August 2024':

> [15] We acknowledge independent country information provides low-level members and supporters of the (then) opposition the AL [sic], such as [the Appellant], are unlikely to be of ongoing interest to the authorities. However there have been significant changes in Bangladesh

recently, which we submit will considerably raise [the Appellant's] profile in the future and place him at an increased risk of harm.

11. The Appellant's counsel argued that the Tribunal mischaracterised this position by treating the Appellant's submission as it was accepted that low level members such as the Appellant were unlikely to be of interest to the authorities. The Appellant's counsel highlighted the following portion of the Tribunal's decision as a misconstrued concession:

> "The applicant's adviser submitted that low level members and supports, such as the applicant, are unlikely to be of interest to the authorities."

12. It was further submitted that the primary judge compounded this error by holding that the Tribunal had merely repeated the Appellant's own submission, and by concluding that the oral submissions were consistent with it referring to the judgement of the Supreme Court where it is stated:

> [47] First, at [44] of its decision, the Tribunal repeated paragraph [15] of the Appellant's written submission before it to the effect that low-level members and supporters, such as the Appellant, are unlikely to be of interest to the authorities. At no point did the Appellant expressly resile from that written submission. Nor, in my view, are the oral submissions made before the Tribunal inconsistent with this written submission.

13. The Respondent argued that although the Appellant now seeks to frame his case as if the Tribunal misunderstood the submissions made by the Appellant's adviser, in effect the Tribunal correctly comprehended them in the right context and dealt with them. It was also submitted that the Tribunal in its decision from [44]- [47] considered those matters. The Respondent's counsel submitted that it was correct for the primary judge to find that the Tribunal did not rely on the Appellant's advisor's written submissions as a concession.

14. We have considered the reasons given by the Tribunal in dealing with the relevant submissions by the Appellant's adviser before the Tribunal, as well as the reasons given by the primary judge. It is pertinent to note that the primary judge also stated the following while dealing with this issue:

> [50] In any event, the Tribunal did not rely solely on paragraph [15] of the Appellant's written submissions as forming the basis for its conclusion that the Appellant would likely not attract attention as a low-level supporter of the BNP. As is apparent at paragraphs [44] to [47] its decision, the Tribunal also relied upon:
> (a) independent country information from DFAT about the risks of adverse attention for returnees (at [44]);
> (b) the Appellant's ability before the change in government to depart and return to Bangladesh on various occasions over multiple years (at [45]); and
> (c) a rejection of the contention that the recent political changes in Bangladesh would raise the Appellant's profile and, as a low-level BNP supporter, the Tribunal was not satisfied that on return to Bangladesh the Appellant would be seriously harmed (at [47])

15. It appears that the Tribunal acknowledged the country information and the contention that the Appellant faced higher risk. Although the Tribunal accepted the country information that low level supporters were unlikely to attract interest, it rejected the contention that the Appellant's role would raise his profile or place him at greater risk. The Tribunal also gave reasons for rejecting the suggestion that recent political changes in Bangladesh would increase the risk.

16. We are of the opinion that the primary judge was correct to uphold that approach. The primary judge observed that in para [44] of the Tribunal's decision reflected the content of the written submissions and that the oral submissions were not inconsistent with them. Also, it was found that the

Tribunal did not treat the submissions as a binding concession, but instead reached its conclusion on the basis of "a fair consideration of all the evidence".

17. In that context, the Appellant's attempt to recharacterize the Tribunal's reasoning as an error of law fails. Therefore, we do not find an error of law in the primary judge's reasoning.

18. In the circumstances, Ground 1 fails.

Ground 2

19. The appellant maintains that what is now pleaded as Ground 2 is not a fresh ground of appeal but rather a reformulation. He submits that it is simply a merger and condensation of the arguments previously advanced as Grounds Two and Three before the Supreme Court, presented in a more concise way. On that basis, he contends that leave of the Court is not required for him to pursue it.

20. It appears that Grounds Two and Three advanced in the court below are the same as those stated in the original Notice of Appeal, as set out in paragraph 6 above. However, in the amended grounds filed on 16 July 2025, the Appellant appears to have abandoned Grounds Two and Three of the original Notice of Appeal and introduced the present Ground Two. Counsel for the Appellant submits that Ground Two in the Amended Notice of Appeal is merely a condensation of those earlier grounds. We are not inclined to accept that submission. Grounds of appeal must be stated without ambiguity as pleaded in the court below, and Ground Two in the amended notice of appeal does not demonstrate, in substance, that it is the same as the grounds advanced in the court below. While it may be open to argue that there are subtle similarities or common elements between the second and third grounds below and Ground Two in the Amended Notice of Appeal, for the purposes of this appeal before

the final appellate Court, we are not persuaded to accept Counsel's characterization.

21. We therefore treat Ground Two as a fresh ground of appeal. Counsel for the Appellant submitted during the oral arguments that, if the Court is minded to treat it as such, leave may be granted as no prejudice will be caused to the Respondent.

22. In WET054 v Republic of Nauru [2023] NRCA 8, this Court discussed at length the legal position with regard to granting leave for a fresh ground of appeal:

> [26] In NAJT v Minister for Immigration and Multicultural and Indigenous Affairs (2005) 147 FCR 51; [2005] FCAFC 134 at [166] the following non-exhaustive list of questions were formulated to consider if leave can be granted to raise a new ground of appeal:
>
> 1. *Do the new legal arguments have a reasonable prospect of success?*
> 2. *Is there an acceptable explanation of why they were not raised below?*
> 3. *How much dislocation to the Court and efficient use of judicial sitting time is really involved?*
> 4. *What is at stake in the case for the appellant?*
> 5. *Will the resolution of the issues raised have any importance beyond the case at hand?*
> 6. *Is there any actual prejudice, not viewing the notion of prejudice narrowly, to the respondent?*
> 7. *If so, can it be justly and practicably cured?*
> 8. *If not, where, in all the circumstances, do the interests of justice lie?*
>
> [27] Taking into account the rationale of the decisions discussed above, we have decided to exercise our discretion to consider if the new grounds of appeal can be allowed. We do not perceive any absolute bar to advance a new ground of appeal in light of the aforementioned authorities, although the Court of Appeal Act does not explicitly provide for it. Despite the provisions in section 48 of the Court of Appeal Act which allows

amendment of a notice of appeal without leave of the Court up to 14 days before the hearing date, we believe that a new ground of appeal that was not raised in the lower court should only be permitted under exceptional circumstances and for compelling reasons, particularly when a serious error is uncovered.

23. Counsel for the appellant acknowledged that no explanation had been provided as to why Ground Two was not advanced in the same form before the Supreme Court. It was submitted, however, that the argument could be dealt with efficiently, would not occupy much of the Court's time, and, if accepted, would entitle the appellant to have his protection claim reconsidered. In those circumstances, counsel urged the Court to consider the merits of the proposed ground in order to assess whether it disclosed any prospects of success, which would in turn justify the grant of leave to advance it.

24. The Appellant submitted that the Tribunal did not properly consider whether there was a reasonable possibility that the Appellant would be harmed incidentally, without being personally targeted, in political protests. Therefore, the Appellant argued that the Tribunal failed to perform its duty under the Refugees Act to consider not only whether he was a refugee but also whether the Appellant was entitled to complementary protection.

25. The Respondent argued that it was not raised before the Tribunal that the Appellant faces a risk of incidental harm at violent protests. It was further submitted that the while the Appellant had referred to violent protests in Bangladesh, his protection claim throughout was consistently premised on being a local organizer or recruiter for the BNP, which would raise his profile and make him a target. The Respondent's Counsel submitted that the Tribunal rejected that premise and Tribunal held that the Appellant is a low level supporter with no likelihood of being harmed.

26. We have considered how the Tribunal considered complementary protection claim and the reasons given by the primary judge in respect of the manner that the Tribunal dealt with the issue. It does not appear that the Tribunal erred as it addressed the Appellant's case as it was actually put. The Appellant's consistent submission had been that he was at risk because of his political profile as a local organizer or recruiter within the BNP. The Tribunal rejected this position and found that he was only a low level supporter. Once that finding was made it was not necessary for the Tribunal to go further and consider about risk of incidental harm at protests that was not specifically raised before the Tribunal. The Tribunal properly considered the complementary protection claim based on the information submitted in respect of the economic hardships.

27. The primary judge was therefore correct to conclude that the Tribunal adequately considered the Appellant's claims. The primary judge stated:

> [86] As the extracts from TTY 167 above demonstrate, it is not for the Tribunal to refer to every piece of evidence before it. The Tribunal is an administrative body and not a Court. It operates with a need to expeditiously determine a significant number of applications referred to it. Its reasons are not to be scrutinized with an eye keenly attuned to error.

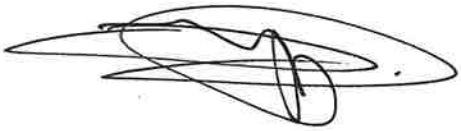
28. As such we do not find any exceptional circumstances or that a serious error is uncovered in the decision of the Tribunal. The fresh ground of appeal advanced by the Appellant does not have a reasonable prospect of success.

29. In the circumstances, the leave to advance the Ground Two is refused.

30. The appeal is dismissed with costs.

Dated this 05 September 2025.

Justice Rangajeeva Wimalasena

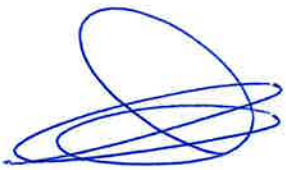


President

Justice Sir Albert Palmer

Justice of Appeal

Justice Kinsley Allen David



Justice of Appeal