



IN THE NAURU COURT OF APPEAL
AT YAREN
CIVIL APPELLATE JURISDICTION

Refugee Appeal
No. 1 of 2023
Supreme Court
Refugee Appeal
Case No. 12 of
2015

BETWEEN

DWN 042

APPELLANT

AND

THE REPUBLIC OF NAURU

RESPONDENT

BEFORE:

**Justice R. Wimalasena,
President
Justice Sir A. Palmer
Justice Kingsley A. David**

DATE OF RULING:

05 September 2025

CITATION: **DWN 042 v The Republic of
Nauru**

APPEARANCES:

COUNSEL FOR the Appellant: Mr. M. Albert

COUNSEL FOR the Respondent: Mr. A. Aleksov

RULING

1. This appeal was scheduled for hearing before us on 29 August 2029. Counsel for the Appellant applied to vacate the hearing on the basis that the Appellant had lodged a subsequent asylum claim on 6 July 2025 pursuant to Section 8 of the Refugee Convention Act (“the Act”). Counsel for the Republic opposed the application.
2. Counsel for the Appellant had previously made a similar application when the matter was mentioned on 17 July 2025 to be fixed for hearing. On that occasion, Appellant’s counsel informed the Court that his client had lodged an application with the Secretary for Multicultural Affairs (Secretary) under Section 8 of the Act for a subsequent asylum claim, seeking fresh consideration. He therefore requested that the appeal not be fixed for hearing until the outcome of that application.
3. Counsel for the Republic submitted that merely lodging an application under Section 8 does not mean it will be entertained, and he opposed the Appellant’s request. He further informed the Court that the application under Section 8

would not be resolved before August, when the Court of Appeal session is scheduled to be held.

4. Having considered the submissions from both parties, the Appellant's application was refused, and the appeal was fixed for hearing, as the mere filing of an application should not be a reason to delay the proceedings. Accordingly, the matter came before us for hearing.
5. However, on Counsel for the Appellant informed the Court of new developments regarding the subsequent asylum claim. He submitted that the Appellant has provided evidence to the Secretary and has also been interviewed. He therefore argued that it would be a futile exercise to proceed with the hearing of the appeal if the Secretary decides to entertain the subsequent asylum claim.
6. Section 8 of the Act states:

Subsequent asylum claim

- (1) A person may not make an application under Section 5, if a determination has previously been made under Section 6(1) with respect to that person.
- (2) Notwithstanding Section 8(1), the Secretary may permit a person to make an application under Section 5, if the Secretary is satisfied that the grounds of the application either:
 - (a) have not been substantially determined by the Secretary, nor by the Tribunal; or
 - (b) are based on a change in the person's circumstances since the previous application was finally determined, including the circumstances in a territory to which the applicant may be expelled or returned.
- (3) The Secretary is not under a duty to consider whether to exercise the power under Section 8(2) in any circumstances.

(4) Neither the Tribunal nor the Supreme Court, has any jurisdiction in respect of a decision of the Secretary not to exercise, or not to consider the exercise of, the Secretary's power under Section 8(2).

(5) A request that the Secretary exercise, or consider the exercise of the Secretary's power under Section 8(2) is not, for the purposes of Section 11 of the Immigration Act 2014, an application to the Secretary to be recognised as a refugee or to be given derivative status.

7. It appears that the Appellant has made the subsequent asylum claim under Section 8(2)(b) of the Act. There is no dispute that, pursuant to Section 8(3), the Secretary is under no obligation to entertain such an application.
8. Therefore, when Counsel for the Appellant requested on 17 July 2025 that the case not be fixed for hearing merely on the basis of an application having been submitted, the Court did not grant that request, as the mere filing of an application under Section 8 carries no weight.
9. However, 29 August 2029 Counsel for the Appellant informed the Court that the Secretary has directed his officers to facilitate the application. It is therefore evident that circumstances have materially changed since 17 July 2025. The Republic does not dispute that steps have been taken in respect of the application. Counsel for the Republic initially submitted that the Secretary's officers had acted without his knowledge, but later, on instructions from Mr O'Shannesy, corrected this position and confirmed that the preliminary steps were taken pursuant to the Secretary's directions.
10. There is no dispute that even though these preliminary steps (which Counsel for the Republic described as "triaging") have commenced, this does not guarantee that the Secretary will ultimately permit the filing of a subsequent application under Section 5. While there is no certainty that such permission will be granted, if it is, the present appeal proceedings will become redundant.

11. Counsel for the Appellant further submitted that the matter has been pending for over ten years and that, during this period, circumstances have changed sufficiently to justify a subsequent application. We also note that if the hearing is vacated, the case could only be re-listed at the next Court of Appeal session, likely to be held early next year. That interval would provide the Secretary with adequate time to decide whether to exercise powers under Section 8(2).
12. We do not consider that the Republic will suffer material prejudice if the hearing is adjourned in light of the recent developments. Accordingly, we order that the hearing be vacated and that the matter be adjourned to be re-fixed for hearing on a later date.
13. Finally, it is noted that Counsel Mr Aleksov, who appeared for the Republic on 29 August 2029 on the instructions of Mr O'Shannesy is the same Counsel who appeared the day before against the Republic in two refugee appeals, in which he opposed Mr O'Shannesy. Now he appears on Mr O'Shannesy's instructions. We are not aware that the appellants for whom he appeared on the previous day, in opposition to the Republic, were fully informed of and consented to this arrangement. When asked to comment on any potential conflict of interest, Counsel responded that he had appeared for both parties in such circumstances before, and had nothing further to add. While no formal objection has been raised, we record our view that Counsel owes a duty not only to his clients but also to the Court, and that in the interests of public confidence and fairness of proceedings, such practices should not be encouraged unless conducted transparently and with the fully informed consent of the parties concerned.

14. Costs in the cause.

Justice Rangajeeva Wimalasena



President

Justice Sir Albert Palmer



Albert Palmer
Justice of Appeal

Justice Kingsley Allen David

Kingsley Allen David
Justice of Appeal