



**IN THE SUPREME COURT OF NAURU**

**AT YAREN**

Case No. 15 of 2025

**IN THE MATTER OF** an appeal  
against a decision of the Refugee  
Status Review Tribunal TFN  
T24/00485 , brought pursuant to s 43  
of the *Refugees Convention Act 2012*

**BETWEEN**

**AO 25**

**Appellant**

**AND**

**THE REPUBLIC**

**Respondent**

**Before:** Justice I Freckelton

**Appellant:** Mr A Aleksov

**Respondent:** Mr R O'Shannessy

**Date of Hearing:** 5 June 2025

**Date of Judgment:** 8 August 2025

**CATCHWORDS**

**APPEAL — refugee claim – irrationality – APPEAL DISMISSED**

## JUDGMENT

1. This matter is before the Court pursuant to s 43 of the *Refugees Convention Act 2012* (“the Act”) which provides that:
  - (1) *A person who, by a decision of the Tribunal, is not recognised as a refugee may appeal to the Supreme Court against that decision on a point of law.*
  - (2) *The parties to the appeal are the Appellant and the Republic.*
  - ...
2. A “refugee” is defined by Article 1A(2) of the *Convention Relating to the Status of Refugees 1951* (“the *Refugees Convention*”), as modified by the *Protocol Relating to the Status of Refugees 1967* (“the *Protocol*”), as any person who:

*“Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to, or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable to or, owing to such fear, is unwilling to return to it ...”*
3. Under s 3 of the Act, “complementary protection” means protection for people who are not refugees but who also cannot be returned or expelled to the frontiers or territories where this would breach Nauru’s international obligations.
4. The determinations open to this Court are set out in s 44(1) of the Act:
  - (a) *an order affirming the decision of the Tribunal;*
  - (b) *an order remitting the matter to the Tribunal for reconsideration in accordance with any directions of the Court.*
5. The Appellant filed an appeal pursuant to s43(1) of the Act against the decision of the Refugee Status Review Tribunal (“the Tribunal”) made on 16 February 2025 (“the decision”).
6. By an Amended Notice of Appeal dated 15 May 2025 against the decision of the Tribunal the Appellant sought that the appeal on a point of law should be allowed and that the matter be remitted to the Tribunal and that pursuant to section 44(2)(b) of the Act, the decision of the Tribunal be quashed.

## BACKGROUND

7. The Appellant is a Muslim man from Bangladesh who arrived in Australia in February 2024 and was transferred to Nauru on 18 February 2024.
8. He submitted a refugee status decision (“RSD”) application dated 8 March 2024 claiming that he feared persecution in Bangladesh because of the involvement by his family in a land dispute and asserting that the dispute was with an abusive and powerful neighbour who is connected with the Awami League (“AL”).

9. The Appellant asserted that in the course of one of the confrontations with the neighbour in relation to land ownership his mother was pushed and as a consequence she fell over. He said that he got involved and as a result was afraid that he would be beaten; the manner of his neighbour and those with him was very threatening. He also stated that the family of the neighbour had lodged a police complaint against his mother and his brother. This required them to appear in court.
10. The contention of the Appellant is that if he returns to Bangladesh, he fears that he will be dragged further into the property dispute and harassed and abused by the neighbour. He said it would be difficult for him to build a house and live into the future peacefully in the context of the land dispute.
11. He also claimed that he could not live peacefully elsewhere in Bangladesh as he is not connected to anyone outside his local area and would not be able to support himself.
12. The Secretary did not accept the application by the Appellant and on 4 September 2024 determined that he was not a refugee and was not owed complementary protection.
13. On 12 September 2024 the Appellant applied to the Tribunal for review of the Secretary's determination.
14. On 16 December 2024 the Appellant appeared before the Tribunal to give evidence and present arguments. He was assisted by an interpreter in the Bengali and English languages and his representative attended the hearing.
15. On 23 February 2025 the Tribunal affirmed the determination of the Secretary. It is this decision against which the Appellant appeals.

## **THE TRIBUNAL DECISION**

16. The Tribunal accepted that there was a boundary dispute between the Appellant's family and his neighbour and that it had been ongoing since 2010.<sup>1</sup> It accepted too that the Appellant's family experienced "some past physical harm, during a scuffle".<sup>2</sup>
17. However, it noted that the long running dispute "appears to be intermittent and low level given that according to the applicant, the dispute has resulted in one previous episode of physical violence."<sup>3</sup> It noted too that the Appellant's family continue to have control over and legal title to the property; is supported by government authorities which have confirmed their ownership over the disputed boundary area;

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<sup>1</sup> Tribunal Decision, at [43].

<sup>2</sup> Tribunal Decision, at [43].

<sup>3</sup> Tribunal Decision, at [44].

and that the court action initiated by the neighbour against the Appellant's brother and mother had been dismissed.<sup>4</sup>

18. It observed that it was clear from the Appellant's evidence that it was his mother and brother who were primarily involved in the dispute and that the Appellant was not involved in the court case, not even being made aware of its outcome, as his mother did not want to worry him,<sup>5</sup> and that he had been working in another village since 2021 and until November/December 2023, which was just before he departed Bangladesh in January 2024.<sup>6</sup> This led the Tribunal to express the view that "the applicant's actual involvement in what is essentially the concern of his mother and brother is limited and at most, he appears a spectator of the conflict rather than a participant."<sup>7</sup>
19. The Tribunal accepted that lang-grabbing and the displacement of small landholders occurs and that the Appellant's family may have suffered occasional threats, and may have even visited other family members in order to obtain some kind of reprieve. However, given the long running, low level and intermittent nature of the dispute, the Tribunal did not accept that the Appellant's family needed to relocate for their safety.<sup>8</sup>
20. The Tribunal concluded that the neighbour would have been able to dominate the land if he really wanted to do so and it took into account that the courts and officials did not assist the neighbour with his goal, with a result that he had been unable to force the appellant's family to transfer title to him. It concluded that "this raises serious concerns about the scope of the land dispute and [the neighbour's] resolve and capacity to seize it unlawfully the possibility of him harming the applicant." [sic]<sup>9</sup>
21. The Tribunal did not accept the claim advanced by the Appellant that the neighbour was so powerful that his family's land would be taken in the future or that the dispute would escalate. It also noted that the AL no longer forms the national government and that it can no longer operate with impunity. Put another way, it concluded that the neighbour had also lost much of his alleged power.<sup>10</sup>
22. The Tribunal noted that the Appellant's family was not without support in the sense that they have other relatives in the village and the authorities "appear on every occasion to have sided with them" against their neighbour.<sup>11</sup>
23. Thus, the Tribunal did not accept that the neighbour was protected by State authorities and considered that there is no reason to assume that police protection will be denied to the Appellant if requested.<sup>12</sup>

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<sup>4</sup> Tribunal Decision, at [44].

<sup>5</sup> Tribunal Decision, at [45].

<sup>6</sup> Tribunal Decision, at [45].

<sup>7</sup> Tribunal Decision, at [45].

<sup>8</sup> Tribunal Decision, at [46].

<sup>9</sup> Tribunal Decision, at [46].

<sup>10</sup> Tribunal Decision, at [46].

<sup>11</sup> Tribunal Decision, at [47].

<sup>12</sup> Tribunal Decision, at [48].

24. It did not accept that there is a reasonable possibility of the whole of the Appellant's land being taken over by their adversarial and violent neighbour. Nor did it accept that there is a reasonable possibility of harm to the Appellant from the neighbour or his family that includes any of the risks identified by the representative's submission of 25 June 2024, namely "a threat to the applicant's life, liberty and physical harassment, cruel and inhumane treatment or punishment, significant physical harassment, ill treatment or degrading treatment or punishment."<sup>13</sup>
25. The Tribunal did not accept that the Appellant and/or his family would be deprived of the ability to make a sustainable livelihood.<sup>14</sup>
26. Upon considering the Appellant's claims individually and cumulatively, the Tribunal concluded that he did not have a well-founded fear of persecution for his membership of the putative social groups identified in the representative's 25 June 2024 submission or for any other Convention reason, including imputed political opinion, and therefore concluded he is not a refugee.<sup>15</sup>
27. The Tribunal also concluded that there is not a reasonable possibility that the neighbour will exert control over the Appellant's family's property or that there is a real risk of harm to the Appellant from the neighbour. Accordingly, it stated that it was not satisfied that there is a reasonable possibility that the Appellant would suffer prohibited treatment on return to Bangladesh.<sup>16</sup>
28. Accordingly, the Tribunal affirmed the decision of the Secretary that the Appellant is not recognised as a refugee and is not owed complementary protection under the Act.<sup>17</sup>

## **THIS APPEAL**

29. The Appellant's Amended Notice of Appeal dated 15 May 2025 asserts that:

The Tribunal engaged in irrational reasoning at Reasons [43]-[47]:

### **Particulars**

- a. The appellant's central claim was that his family was party to a land dispute with a neighbour, who had sought to 'land grab' half of the appellant's family's land.
- b. Associated with this dispute, the landgrabber, claimed to be a rich and powerful local identity, harassed the appellant's family and on one occasion physically harmed the appellant's mother, brother, and the appellant himself.
- c. The Tribunal accepted this narrative and that the land dispute would continue into the future.

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<sup>13</sup> Tribunal Decision, at [48].

<sup>14</sup> Tribunal Decision, at [48].

<sup>15</sup> Tribunal Decision, at [49], [51].

<sup>16</sup> Tribunal Decision, at [55].

<sup>17</sup> Tribunal Decision, at [55].

- d. The Tribunal found that the land dispute would not expose the appellant to a reasonable possibility of harm in the future.
- e. The land dispute included one episode of past violence, one failed false court action by the landgrabber, and many episodes of harassment. The Tribunal accepted that the land dispute would continue into the future.
- f. It was irrational to find that there was no reasonable possibility of the applicant experiencing some form of violence at the hands of the landgrabber.

30. The Appellant seeks that the appeal on a point of law under section 43(1) be allowed and that the Court order that the matter be remitted to the Tribunal pursuant to section 44(1)(b) of the Act for reconsideration and that the decision of the Tribunal be quashed under section 44(2)(b) of the Act.

### **SUBMISSIONS ON BEHALF OF THE APPELLANT**

31. On behalf of the Appellant, Mr Aleksov of counsel contended that the central claim of the Appellant was that his family was party to a land dispute with a neighbour, who had sought to “land grab” half of the Appellant’s family’s land. Associated with this dispute, the landgrabber claimed to be a rich and powerful local identity, harassed the Appellant’s family and on one occasion physically harmed the Appellant’s mother, brother, and the Appellant himself. However, in oral submissions, he conceded that the episode of violence was not perpetrated directly against the Appellant.<sup>18</sup>

32. Mr Aleksov asserted that the Tribunal accepted this narrative but found that the land dispute would not expose the Appellant to a reasonable possibility of harm in the future. He said that the reasoning was simple - the land dispute was intermittent and low level. However, he said, in whatever way one classifies the dispute, it includes one episode of past violence, one failed false court action by the landgrabber, and many episodes of harassment of sufficient severity to prompt the Appellant’s family to leave the land for a reprieve. He noted that the Tribunal accepted that the land dispute would continue into the future.

33. This meant, he asserted, that it was irrational to find that there was no reasonable possibility of the Appellant experiencing some further form of violence at the hands of the landgrabber. He argued that this is a very low threshold – as low as 10% - and given that it had occurred in the past, in the context of a dispute that will continue, to find that there is no real chance of an isolated escalation is not rational.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENT**

34. Mr O’Shannessy for the Respondent argued that the Tribunal complied with section 40 of the Act and did not otherwise breach its procedural fairness obligations to the Appellant.

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<sup>18</sup> Transcript at p3.

35. Mr O'Shannessy argued that the Tribunal's reasoning was not as simple as contended by Mr Aleksov. It made the finding that the long running dispute about land was intermittent and low level but also that the Appellant was not a protagonist in it "but rather a spectator at most".<sup>19</sup> Referring to the account given by the Appellant to the Tribunal,<sup>20</sup> he noted that the concern expressed by the Appellant which prompted his family to relocate for a time was bad language to which his mother did not want to listen – "This was not an emergency escape while the dispute died down, this was getting sick of the neighbour shouting at them, and going to stay with someone else."<sup>21</sup>
36. He argued that there was no internal tension between the findings at paragraphs 43 and 46 of the Tribunal's reasons, the Tribunal concluding that the dispute would continue but then making findings about the scope and the circumstances which could conceivably give rise to risk of harm.
37. He noted too that being a victim of land-grabbing could not give rise to a Convention claim and that no complementary protection claim was pressed.
38. On these bases, he contended that the decision of the Tribunal should be affirmed.

## CONSIDERATION

39. The Tribunal set out its reasoning in detail. While it accepted that there had been a long-running land dispute between the Appellant's family and the neighbour in which on one occasion the family (not the Appellant himself, according to the Tribunal's findings) experienced some physical harm during a scuffle, and that the dispute is likely to continue, it characterised the disputation as "intermittent and low level". It took into account too that the neighbour had been unsuccessful in a court challenge, that it has been the mother and the brother of the Appellant who have been involved in the dispute and concluded that the Appellant "appears a spectator of the conflict rather than a participant".<sup>22</sup> This is a finding which was reasonably open on the evidence available to the Tribunal.
40. The Tribunal reviewed the history of the tensions between the Appellant's family and the neighbour and determined that the appellant's family did not have to relocate for their safety, that in spite of the previous power of the AL, with which the neighbour was associated, the courts and authorities had not assisted the neighbour and that he had been unable to force the Appellant's family to transfer their title to him.
41. It was open to the Tribunal, in light of these findings, to have reservations about the resolve and capacity of the neighbour to seize the disputed land and impacted upon the potential for him to do harm to the Appellant. The fact that the Tribunal

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<sup>19</sup> Transcript, at pp7-8.

<sup>20</sup> Tribunal Book, at p168.

<sup>21</sup> Transcript, at p8.

<sup>22</sup> Tribunal Decision, at [45].

had found that there had been a minor scuffle in the past in which some harm was done to a member of the Appellant's family is not inconsistent with the Tribunal's conclusion, as claimed on behalf of the Appellant.

42. The Tribunal also took into account that the AL, with which the neighbour is associated, has lost power at the national level and can no longer act with impunity.

43. Insofar as the Appellant has contended that the Tribunal's conclusion that there is not a reasonable possibility of harm in the future to the Appellant or his family from the neighbour or of other forms of harm, that too is not irrational and was a conclusion reasonably open to the Tribunal.

44. The Tribunal's findings are neither internally inconsistent nor infected by irrationality.

## CONCLUSION

45. Under section 44(1)(a) of the *Refugees Convention Act 2012* (Nr), the appeal is dismissed and the decision of the Tribunal dated 23 February 2025 is affirmed

Ian Freckelton

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Justice Ian Freckelton  
Dated this 8<sup>th</sup> day of August 2025

