



IN THE SUPREME COURT OF NAURU

AT YAREN

Appeal No. 44 of 2025

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

BETWEEN:

BR25

Appellant

AND:

REPUBLIC OF NAURU

Respondent

Before: Brady J

Dates of Hearing: 25 November 2025

Date of Judgment: 2 December 2025

Citation: *BR25 v Republic of Nauru*

CATCHWORDS:

Appeal – Refugees – Refugee Status Review Tribunal – Whether Tribunal failed to consider the actual evidence before it, or misunderstood that evidence – Whether Tribunal Decision affected by legal error – Tribunal did not fail to consider the actual evidence or misunderstand the evidence – No error of law – Appeal Dismissed

LEGISLATION:

Refugees Convention Act 2012 (Nr), s.43, 44.

CASE AUTHORITIES:

HFM038 v Republic of Nauru [2023] NRCA 14 at 20, *NABE v Minister for Immigration and Multicultural and Indigenous Affairs (No. 2)* [2004] FCAFC 263; (2004) 144 FCR1, *TTY167 v Republic of Nauru* [2022] NRSC 30 at [73] - [76]; *QLN107 v Republic of Nauru* [2018] NRSC 23 at [47] - [52]; *AR25 v Republic of Nauru* [2025] NRSC 67 at [32].

APPEARANCES:

Counsel for Appellant: Mr A Aleksov (instructed by International Crossover)

Counsel for Respondent: Ms K McInnes (instructed by Republic of Nauru)

REASONS FOR JUDGEMENT

INTRODUCTION

1. The Appellant is a national of Pakistan. The Appellant claims to be a refugee because of a land dispute with his cousins. He claims that while working as a mechanic, two masked men shot at him. He thought the people were hired by his cousins. The Appellant fears that if he returns to Pakistan, he will be killed.
2. Pursuant to s.43 of the Refugees Convention Act 2012 (Nr) (**the Act**), the Appellant appeals from a decision of the Refugee Status Review Tribunal (**Tribunal**) made on 25 July 2025 (**Tribunal Decision**). The Tribunal affirmed a determination of the Secretary of the Department of Multicultural Affairs (**Secretary**) dated 16 September 2024 (**Secretary's Decision**). The Secretary decided not to recognise the Appellant as a refugee under the Act and found that the Appellant was not owed complimentary protection under the Act.

3. By s.43(1) of the Act, the Appellant may appeal to this Court on a point of law. By s.44(1) of the Act, this Court may make either of the two following orders:
 - (a) an order affirming the Tribunal Decision; or
 - (b) an order remitting the matter to the Tribunal for reconsideration in accordance with any directions of this Court.

GROUND OF APPEAL

4. In his Amended Notice of Appeal dated 19 November 2025, the Appellant initially advanced two grounds of appeal. At the hearing of this appeal, the Appellant did not press the second ground. The sole remaining ground is in these terms:

The Tribunal failed to consider the actual evidence before it, or misunderstood that evidence, in relation to the employer's evidence (Reasons [143]), in that the employer never said that he had been unable to contact the Appellant.

PROCEDURAL HISTORY

5. The Appellant arrived in Australia in February 2024. On 18 February 2024, he was transferred to Nauru pursuant to the memorandum of understanding between the governments of Nauru and Australia. On 11 March 2024, the Appellant applied for Refugee Status Determination (**RSD**).
6. The Secretary's Decision was made on 16 September 2024. The Appellant then applied to the Tribunal for review of that decision. The Appellant (through his then-representative) provided further submissions to the Tribunal, as well as a further statement.
7. The Appellant attended a hearing before the Tribunal on 18 March 2025. He gave evidence and presented arguments. He was assisted by an interpreter, as well as his then-representative who attended the hearing.
8. The Tribunal Decision was given on 25 July 2025.
9. The Appellant filed a notice of appeal to this Court on 4 August 2025. The Amended Notice of Appeal was filed on 20 November 2025, and the appeal was heard on 25 November 2025.

THE APPELLANT'S CLAIMS

10. The Tribunal summarised the Appellant's claims in these terms in the Tribunal Decision:
 - [12] The applicant's family has ancestral land in [S]. When the applicant's grandfather died, the land was divided between his four sons; the applicant's father and his father's three brothers ... (the applicant's paternal uncles).
 - [13] When the applicant's father died, his share of the land was inherited by his five sons. The applicant being the youngest son.

[14] The paternal uncles are all deceased and their land has been inherited by their sons. One of the sons (the applicant's cousin) [A] has tried to grab the applicant's (and his brothers') share of the land. The applicant fears that [A] will kill him if he returns to Pakistan. The applicant also claims that he has disobeyed the ruling of the Jirga which mediated in the land dispute and will be harmed for these reasons.

[15] For the following reasons, the Tribunal did not accept the crux of the applicant's claims. It found he was not credible. Accordingly, it found that the applicant was not a refugee and was not owed complimentary protection.

GROUND OF APPEAL – FAILURE TO CONSIDER, OR MISUNDERSTANDING OF, THE EVIDENCE

11. The Appellant argues that the Tribunal failed to consider the actual evidence before it, or alternatively misunderstood that evidence. That is said to arise from the evidence given by the Appellant's employer about a shooting incident in which the Appellant contends he was involved.

12. The Tribunal dealt with its findings concerning the shooting incident commencing at [141] in the following terms:

[141]. In relation to the shooting incident, the applicant described how he was working in a large outdoor yard where there were 50 other people working. He was under a vehicle when shots were fired at him hitting the vehicle's tyres. He crawled out from under the vehicle. He said he stood up and saw these shooter's face was covered. The Tribunal raised some concerns with this account; as to how someone driving by would know that he was under that particular vehicle, given there were other workers and vehicles in the yard and he was not visible, also if he was immobilised under the vehicle, why the assassin would not just walk up to the vehicle and actually shoot at him rather than just shoot in the general vicinity. When these concerns were discussed with the applicant, he said that the assassins must have been watching the premises and taking note of when he was coming and going and where he was. If this was the case, they could have made a more targeted attack. Although the Tribunal cannot speak to the competency of would-be assassins, it was another troubling aspect of the applicant's account. Further, the applicant standing and observing the shooter's covered face whilst being shot at lacks credibility.

[142] The reason the applicant did not go to the police has also changed. Initially, he said it was because he was too panicked. He told the Tribunal that it was primarily because the police would ask him questions and hassle him. Apart from the concern about the change in his reason, the Tribunal does not accept that a victim of a shooting would not report it to the police because the police would ask too many questions.

[143] The Tribunal has considered the statement that purports to be from the applicant's employer and notes that some of the contents of that statement is inconsistent with the applicant's account to the Tribunal. It is unclear why the applicant says he was in contact with his former employer when his

former employer states that he had been unable to contact him. The statement appears to have been made in March 2024 specifically for the RSD application, although the bottom of the document has been cut off where it has been signed. If the former employer has been unable to contact the applicant, it is unclear how he obtained the statement. The Tribunal has been unable to test the contents of the document and when weighed against the applicant's evidence and its other concerns, the Tribunal does not accept that the applicant was a victim of a shooting.

13. The reference in paragraph [143] above to the evidence of the Appellant's former employer is a reference to a statement (described as an "affidavit") by the Appellant's former employer obtained by the Appellant apparently for the purposes of the RSD process. The affidavit was made available to the Secretary prior to his decision.
14. The former employer declared in that document that he has a store and workshop with a specified name in a specified place. He stated that the Appellant was working in his workshop. The former employer states that on 18 September 2023, some unknown persons started firing at the Appellant at the workshop. At that time, the Appellant was doing repair work under a truck. Due to the bullets, both the tyres of the truck were burst but the Appellant was safe and managed to escape. The unknown persons escaped from there at the same time.
15. At Paragraph [5] of the affidavit, the employer says:

[5] That I submitted the application at the concerned police station at the same time Let it be investigate that there has been firing on my worker [the Appellant] in my workshop. Later, the police asked [the Appellant] to appear in the police station, but we did not find [the Appellant] which is why we did not follow the said application. [*sic*]

THE APPELLANT'S SUBMISSIONS

16. The Appellant contends that his claim of being shot at whilst working in the mechanic shop was a "significant claim". He contends that this claim was corroborated by his former employer's affidavit. The Appellant notes that the Secretary had accepted this evidence in the Secretary's Decision.
17. The Appellant submits that it is unclear what the Tribunal meant by referring to the former employer's evidence that the former employer "has been unable to contact" the Appellant. The Appellant draws attention to paragraph 5 of the former employer's affidavit. He submits that there was no evidence before the Tribunal that his employer had been "unable to contact him". The Appellant submits that in rejecting the former employer's evidence for this reason, the Tribunal must have misunderstood the evidence, or failed to consider the actual evidence before it, giving rise to an error of law.
18. The Appellant also notes the terms of the transcript of the Tribunal hearing where these issues were dealt with. The relevant passage is at page 154 of the Court Book and is in these terms:

Ms Boddison: You provided a statement from [the employer], is that you (indistinct).

The Interpreter: Yes.

Ms Boddison: And he says he went to the police?

The Interpreter: Yes.

Ms Boddison: Did you go to the police?

The Interpreter: No. I didn't go. I believe he went there just to temporarily report the matter to the police. He went there and advised them that this person was working with me. He was shot at it, but he has gone away now. I'm not doing a formal report, I'm just letting you know temporarily if anything comes up. So you have a temporary report of the incident.

Ms Boddison: And did [the former employer] ever ask you to go to the police?

The Interpreter: No, I was already gone by then. I probably had one or twice contact with him and I have told him what has happened. I was really sorry that because of me, your place was damaged or this incident happened. He told me as long as you are safe and unhurt, I can deal with my workshop situation.

Ms Boddison: So you did have contact with him after his stay?

The Interpreter: Yeah. Well, before probably, but I haven't visited back.

Ms Boddison: Okay. He says in his statement that he did make a report to the police and the police wanted you to come and report to them as well as the victim, but they couldn't find you. Do you act back when they find you?

The Interpreter: Yes. Because I was already gone and if I was there, then the police would have been asking a lot of questions and I wouldn't know who were the people they were firing at me at the time. And then instead of helping the police (indistinct) keep bothering me, and we tend to stay away from the police because they do give a hard time.

Ms Boddison: But could not you tell the police that you thought it was your cousin who had these papers?

The Interpreter: No. I don't think so it would have worked because it was a totally different province...

19. In his oral submissions, Mr Aleksov on behalf of the Appellant submitted that the Tribunal apprehended that the evidence from the employer was that the employer was unable to contact the Appellant in a way inconsistent with the Appellant's case before the Tribunal. The only place that the Tribunal could have relied upon to possibly reach that conclusion is paragraph [5] of the former employer's statement. Whilst Mr Aleksov accepted that there was some ambiguity in that passage, it was not intelligible and reasonable to infer from that statement that the former employer had been unable to contact the Appellant *at all* in the time since the incident occurred.
20. The Appellant submits that the only argument put against his position by the Republic is that the approach of the Tribunal was a reasonable option open to them. He notes that it was not put against the Appellant that the evidence was not important.

THE REPUBLIC'S SUBMISSIONS

21. The Republic submits that the Tribunal's statement at [143] that "his former employer states that he has been unable to contact him" refers to the evidence of the former employer that they "did not find" the Appellant.
22. The Republic submits that if a person has attempted to find someone, it naturally follows that they were also unable to establish contact.
23. The Republic submits that the fact that the Tribunal's wording is not a verbatim replication of the evidence of the former employer does not disclose any error. The Republic refers the Court to the decision of the Nauru Court of Appeal in *HFM038 v Republic of Nauru* [2023] NRCA14 at 20, to the effect that a Court should not be "concerned with looseness in the language... nor with unhappy phrasing" of the reasons of an administrative decisionmaker. The Republic submits that the Tribunal's reasons are a fair reflection of the evidence.
24. Counsel for the Republic submits that the conclusion of the Tribunal was open to it and this Court should not put itself in the shoes of the Tribunal who was to assess the evidence. The Tribunal's conclusion understood the affidavit of the former employer in a manner which was open on the evidence. It was a matter for the Tribunal to assess that evidence,

CONSIDERATION

25. The Appellant will establish an error of law if the Tribunal failed to consider relevant evidence in a manner tantamount to a failure to consider the claim that he advances. The remarks of the Full Court of the Australian Federal Court (Black CJ, French and Selway JJ) in *NABE v Minister for Immigration and Multicultural and Indigenous Affairs (No. 2)* [2004] FCAFC263; (2004) 144 FCR1 are apposite here. At [63], the Full Court said:

It is plain enough, in the light of *Dranichnikov*, that a failure by the Tribunal to deal with a claim raised by the evidence and the contentions before it which, if resolved in one way, would or could be dispositive of the review, can constitute a failure of procedural fairness or a failure to conduct the review required by the Act and thereby a jurisdictional error. It follows that if the Tribunal makes an error of fact in misunderstanding or misconstruing a claim

advanced by the applicant and bases its conclusion in whole or in part upon the claim so misunderstood or misconstrued, its error is tantamount to a failure to consider the claim and on that basis, can constitute jurisdictional error. The same may be true if a claim is raised by the evidence, albeit not expressly by the applicant, and is misunderstood or misconstrued by the Tribunal. Every case must be considered according to its own circumstances. Error of fact, although amounting to misconstruction of an applicant's claim, may be of no consequence to the outcome. It may be "subsumed in findings of greater generality or because there is a factual premise upon which [the] contention rests which has been rejected": *Applicant WAEE* (at [47]), but as the Full Court said in *WAEE* (at [45]):

If the Tribunal fails to consider a contention that the applicant fears persecution for a particular reason which, if accepted, would justify concluding that the applicant has satisfied the relevant criterion, and if that contention is supported by probative material, the Tribunal will have failed in discharge of its duty, imposed by s.414 to conduct a review of the decision. This is a matter of substance, not a matter of the form of the Tribunal's published reasons for decision.

26. The quotation from NABE has been adopted in this jurisdiction in cases such as *TTY167 v Republic of Nauru* [2022] NRSC30 at [73] - [76]; *QLN107 v Republic of Nauru* [2018] NRSC23 at [47] - [52]; *AR25 v Republic of Nauru* [2025] NRSC67 at [32].
27. Two fundamental questions arise in this case:
 - (a) Did the Tribunal, in reaching the finding that the former employer stated that he had been unable to contact the Appellant, fail to consider the relevant evidence of the former employer, or misunderstand that evidence?
 - (b) If so, whether such a failure or misunderstanding demonstrates a failure to consider the Appellant's claim. If so, then the Tribunal's error in its understanding of the evidence may amount to an error of law.
28. Plainly enough, the Tribunal did not fail to consider the evidence of the former employer. The Tribunal's reference to the former employer's statement that the employer "has been unable to contact" the Appellant, clearly has been derived from paragraph [5] of the affidavit. That the Tribunal's reasons were not a verbatim replication of the evidence was not such as to disclose any legal error.
29. But was the effect of the evidence of the former employer misunderstood? This is a more difficult question, in my view. On one reading (perhaps even the most obvious meaning), the former employer was not saying any more than that, *when the police asked for the Appellant to attend the police station*, he could not be found. So, the argument would go, the affidavit says nothing about contact in more recent times, at a time removed from the alleged shooting incident.
30. However, as counsel for the Appellant conceded in the course of oral argument, the evidence from the former employer on this question is "plainly ambiguous". On careful reflection, I am not satisfied that the Tribunal's conclusion on this issue was

outside the range of conclusions open to it. I regard the Tribunal's reading of this evidence as being open on the basis of the evidence, although I readily accept that an alternative reading was also an open interpretation.

31. I am therefore not sufficiently persuaded that the position is such that it can be concluded that the Tribunal misunderstood the effect of this evidence.
32. Even if I was persuaded that the Tribunal did misunderstand this evidence, I would not conclude that the misunderstanding was such as to demonstrate a failure to consider the Appellant's claim so as to give rise to an error of law. No doubt, a failure by the Tribunal to deal with a claim raised by the evidence and the contentions before it can possibly constitute a failure of procedural fairness or a failure to conduct the review required by the Act. However, I consider that any error in relation to the Tribunal's understanding of the former employer's evidence (if there was any such misunderstanding) would not be an error of fact in *misunderstanding or misconstruing a claim advanced by the Appellant*. The Appellant's claim as to the shooting incident was considered with some care by the Tribunal. No legal error would result, even if (contrary to my primary finding), the Tribunal did misunderstand paragraph [5] of the former employer's evidence.
33. The Appellant has failed to establish this ground of appeal.

CONCLUSION

34. For the reasons that I have set out, the Appellant has failed in his ground of appeal. The appeal is dismissed.
35. Pursuant to s.44(1) of the Act, I make an order affirming the Tribunal Decision.
36. I make no order as to costs.



JUSTICE MATTHEW BRADY

2 December 2025

