

## **QLN147 v THE REPUBLIC OF NAURU (M27/2018)**

Court appealed from: Supreme Court of Nauru [2018] NRSC 2

Date of judgment: 20 February 2018

The appellant is a citizen of Sri Lanka, of Tamil ethnicity. He fled from Sri Lanka to India in October 2013, and travelled from India to Australia in July 2014. He was then transferred to Nauru for the purposes of having his claims assessed.

He claimed refugee status on the basis of fear of harm because he is a Tamil from North Sri Lanka, has the imputed political opinion of a supporter of the Liberation Tigers of Tamil Eelam (“LTTE”) because he gave a LTTE member a lift in his boat, and is a member of the particular social groups of “Sri Lankan Tamils from Mannar area”, “Tamil failed asylum seekers” and “Sri Lankan Tamils previously resident in India as lawful/unlawful refugees”.

On 26 November 2016 the Refugee Status Review Tribunal of Nauru (“the Tribunal”) affirmed the decision of the Secretary of the Department of Justice and Border Control that the appellant was not recognised as a refugee under the 1951 *Refugees Convention relating to the Status of Refugees*, and was not owed complementary protection under the *Refugees Convention Act 2012* (Nr) (“the Act”).

The appellant appealed to the Supreme Court of Nauru (Marshall J). His sole ground of appeal was whether the Tribunal failed to consider a claim to invoke the Republic’s complementary protection obligations, or significant evidence in support of that claim, which concerned the harm the appellant would suffer during any period on remand in a Sri Lankan prison as a consequence of having left Sri Lanka illegally.

Marshall J noted that the Tribunal gave its conclusions on the complementary protection claims as follows:

*“As noted, the Tribunal accepts that on return to Sri Lanka the applicant could be arrested and charged with a breach of the Immigrants and Emigrants Act over his illegal departure for India in 2013. ... While it is possible that he could be held on remand for a small number of days while awaiting a hearing in a magistrates court, in cramped and unsanitary conditions, the Tribunal does not accept that this in itself would constitute torture or cruel, inhuman or degrading treatment or punishment of a kind prohibited by Nauru’s international human rights commitments. ... the evidence before the Tribunal does not indicate that returnees who have been charged with illegal departure and remanded in custody have been tortured whilst on remand and the Tribunal does not accept that the applicant will be tortured whilst being held on remand” .*

Marshall J accepted the respondent’s submission that the failure of the Tribunal to make specific reference to the material provided by the appellant about the conditions in prisons in Sri Lanka was unremarkable. That material was very general and did not relate to the specific matter required to be considered by the Tribunal which was whether detention for up to three days on remand in

Negombo prison would amount to cruel and inhumane treatment. The material did not address that issue so the Tribunal was not required to expressly refer to it in coming to its decision on complementary protection.

His Honour held that the Tribunal's finding that the possibility of the appellant being held on remand "for a small number of days" in "cramped and unsanitary conditions" would not "in itself" amount to "torture or cruel, inhuman or degrading treatment or punishment of a kind prohibited by Nauru's international human rights commitments" was open to the Tribunal on the material before it.

As to the argument that the Tribunal failed to give adequate reasons for its decision Marshall J noted that the Tribunal referred to the submissions of the appellant's representative, including the fact that it cited "a range of country information relative to human rights conditions in Sri Lanka... and the forms of harm the applicant claims to fear on return". There was no requirement to deal with each item of that material that touched on prison conditions in Sri Lanka in the absence of material directly relevant to short term remand prisoners held at Negombo prison. This aspect of the appellant's contentions was also rejected.

The grounds of the appeal include:

- The Supreme Court of Nauru erred in rejecting the appellant's argument that the Tribunal made errors of law by:
  - (1) failing to consider the appellant's evidence regarding all of the conditions in Sri Lankan prisons and why they cumulatively constituted cruel, inhuman or degrading treatment;
  - (2) alternatively, if the Tribunal had considered such evidence but regarded it as irrelevant, the Tribunal erred;
  - (3) and in any event, if the Tribunal rejected this evidence, it failed to give adequate reasons for doing so.