

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY



No. M131 of 2017

BETWEEN:

CRI026
Appellant

and

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THE REPUBLIC OF NAURU
Respondent

**APPELLANTS' OUTLINE OF ORAL SUBMISSIONS
ON GROUNDS 2, 3 and 4**

Part I

1. This outline is in a form suitable for publication on the internet.

Part II

20 **Ground 2 – errors in the reasons**

2. In circumstances where a three member tribunal delivers reasons that, in the section purporting to be the *ratio* of the decision, refers to the appellant (who at the time of the hearing was a 40 year old Pakistani) as a Sri Lankan Tamil, and concludes that he will not face persecution on the basis of being a young Tamil returning to Sri Lanka or on the basis of imputed political opinions that might lead to persecution in Sri Lanka, the Supreme Court should have concluded that the Tribunal had failed to engage in the kind of focussed and deliberative assessment of the Appellant's individual protection claims that was required.
3. Contrary to the respondent's submissions, more is required than that the Tribunal was 'alert to the particular circumstances of the appellant'. The nature of the errors demonstrate that the three Tribunal members did not actually address their minds only to the individual circumstances of the Appellant.
4. Further the scheme of the *Refugee Convention Act 2012* (Nauru) is inconsistent with a power to deliver further reasons after a decision has been handed down: see eg ss 33, 34(5), 43(3) and 51(6). By the time the corrigendum was delivered some 6 months after the event and after the appeal to the Supreme Court, the Tribunal was *functus officio*.

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Ground 3 – relocation objection not adequately considered

5. Grounds 3 and 4 were not argued in the Supreme Court. This Court should consider them especially where the appellant was self-represented in the Supreme Court and where they turn on the documentary record. The appellant does not seek to advance any argument that might have been dealt with by evidence not before the Tribunal.

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6. It follows from the fact that the Tribunal referred to the appellant relocating to the Punjab province, that it accepted that he would otherwise return to Karachi, where he had lived for most of his life (as found at AB 181 [9]).
7. The Tribunal did not reject (or deal with) the appellant's evidence (AB45[19] and AB130.44) that he had been living in hiding in the Punjab town that he had lived in after fleeing Karachi. It would not be reasonable to require him to relocate to the place where he had been hiding. For the Tribunal to have concluded that there was a place to which it was reasonable to relocate, it must have meant somewhere other than that particular town.
- 10 8. In addition, he gave evidence that:
- (a) he had a wife and two young children who were dependent upon him: AB44 [9] and 54;
 - (b) he needed to provide for his children's educational needs and look after them: AB174.19;
 - (c) his concerns were that relocating would force him to take his children with him, exposing them to an increased risk of harm: AB47 [35];
 - (d) the children, and his wife, lived in the particular town: AB181 [9].
9. If the Tribunal was saying that he could not return to that town, because he would then be hiding, then it follows that it thought that he should relocate to somewhere else in the Punjab. But if that were the case:
- 20 (a) the Tribunal did not say where, which as explained by Hayne J in *M13* (**Authorities item 6**) is an error, because it demonstrates a failure to consider the particular circumstances of the claimant; and
- (b) the Tribunal did not deal with the effect of relocation upon his children.

Ground four – lack of evidence

10. The evidence that the Tribunal relied on for the findings at AB190 [57] and [59] about the MQM having little or no power or influence outside Sindh, is the two documents referenced at [57] of the Tribunal's reasons at footnote 10 and 11. They are reproduced at AB260 and AB301-2.
- 30 11. It is submitted that those documents do not support or justify the findings made at [57] and [59] that are the subject of the fourth proposed ground of appeal.

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