



HIGH COURT OF AUSTRALIA

14 April 2021

ALO-BRIDGET NAMOA v THE QUEEN
[2021] HCA 13

Today the High Court unanimously dismissed an appeal from a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales ("the CCA"). The appeal concerned the interpretation of s 11.5(1) of the *Criminal Code* (Cth) ("the Code"), which creates a statutory offence of conspiracy, and whether that offence applies to spouses who agree between themselves, and no other person, to commit an offence against a law of the Commonwealth.

Following a trial by jury in the Supreme Court of New South Wales, the appellant was convicted of conspiring to do acts in preparation for a terrorist act contrary to ss 11.5(1) and 101.6(1) of the Code. The offence occurred between 8 December 2015 and 25 January 2016. Prior to the trial, the trial judge rejected an application for a permanent stay which had been made on the basis that the appellant and her co-conspirator married on 30 December 2015, and, as husband and wife, could not be guilty of conspiracy under the Code. On 6 April 2020, the CCA held that on the clear language of the Code, a husband and wife are each a "person" and can be guilty of conspiring with each other within the meaning of s 11.5.

By grant of special leave, the appellant appealed to the High Court. The Court upheld the CCA's decision, holding that the proper interpretation of s 11.5(1) of the Code is not affected by any common law rule that spouses alone cannot conspire. Irrespective of whether there is or was such a common law rule, that rule had not been incorporated into the offence in s 11.5 by the words "conspires" and "conspiracy". It was therefore unnecessary for the Court to consider whether the common law includes or included such a rule at any relevant time. The Court confirmed that whatever may have been the historical position, there is no longer any principle in Australian common law respecting the single legal personality of spouses. Section 11.5(1) applies to spouses who agree between themselves, and no other person, to commit an offence against a law of the Commonwealth. Accordingly, the offence in s 11.5 applied to the appellant and the appeal was dismissed.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*