MEG027 & ANOR v. REPUBLIC OF NAURU (M21/2017)

Court appealed from: Supreme Court of Nauru
[2017] NR SC 5

Date of judgment: 7 February 2017

This appeal raises issues of Nauru's international obligations under the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child and consideration of the *Refugees Convention Act* 2012 (Nr).

The Appellants are a mother and son of Iranian citizenship who have unsuccessfully applied to the Republic of Nauru for refugee status determination. They left Iran by plane on 21 June 2013 and were intercepted by Australian authorities on 24 July 2013 on a boat from Indonesia and transferred to detention on Christmas Island. Then on 24 August 2013 they were transferred from Christmas Island to detention in Nauru where they remain.

On 16 December 2013 the Appellants made an application to Nauru for refugee status determination under the *Refugees Convention Act* 2012 (Nr), relying on grounds including their family's political profile; the risks to the mother of being a divorced woman with no male protection; the risks to the mother, her son and her ability to find employment from her ex-boss who had sexually assaulted her; the risk of harm to her son from being taken back into the custody of his her former husband, a serious drug user; and the risk of being returned to Iran as failed asylum seekers.

The Secretary of the Nauru Department of Justice and Border determined that the First Appellant (mother) was not a refugee and was not entitled to complementary protection, and that the Second Appellant (son) could not be accorded derivative status. The Appellants made an application for review of that decision to the Nauru Refugee Status Review Tribunal. The Tribunal affirmed the earlier determination on 26 September 2014. It did not accept that the First Appellant had a well-founded fear of persecution in Iran on the claimed grounds.

The Appellants then appealed to the Supreme Court of Nauru on two narrow grounds of appeal on points of law, each of which related to the manner in which the Tribunal dealt with the First Appellant's claim that her ex-husband would take custody of the Second Appellant if they returned to Iran.

On 7 February 2017 the Supreme Court of Nauru dismissed the appeal and affirmed the Tribunal's decision. The Appellants then appealed to the High Court of Australia pursuant to s 5 of the *Nauru (High Court Appeals) Act* 1976 (Cth). This Act implements the Agreement between the Governments of Australia and Nauru relating to appeals to the High Court of Australia from the Supreme Court of Nauru signed on 6 September 1976. It provides that in civil cases in which the Supreme Court of Nauru was exercising its original (rather than appellate) jurisdiction such as this one, an appeal lies to the High Court as of right against any final judgment.

The grounds of the appeal are that the Tribunal:

- Erred in failing to implement Nauru's international obligations under the Convention to Eliminate All Forms of Discrimination Against Women under the (CEDAW) in considering the claims of the First Appellant;

- Erred in failing to consider claims by the Second Appellant that his return to Iran would contravene Nauru's obligations under the Convention on the Rights of the Child; and

- Erred in failing to deal with submissions and country information relating to the Appellants' claim that they might face harm as failed asylum seekers if returned to Iran.

The written submissions filed by the parties raise a preliminary issue of whether the Appellants may raise grounds of appeal that were not raised in the Supreme Court of Nauru.