Thapa v Minister for Immigration and Multicultural Affairs [2025] FCA 233

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| Appeal from: | *Thapa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FCCA 1017 |
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| File number(s): |  |
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| Judgment of: | **GOODMAN J** |
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| Date of judgment: | 20 March 2025 |
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| Catchwords: | **MIGRATION** – appeal from orders of the (then) Federal Circuit Court of Australia – appellant did not appear – appeal dismissed |
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| Legislation: | *Federal Court of Australia Act 1976* (Cth), s 25  *Federal Court Rules 2011* (Cth), r 36.75, Sch 3, item 15.1 |
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| Cases cited: | *Paciocco v Australia and New Zealand Banking Group Limited (No 2)* [2017] FCAFC 146; (2017) 253 FCR 403  *Thapa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FCCA 1017 |
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| Division: | General Division |
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| Registry: | New South Wales |
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| National Practice Area: |  |
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| Number of paragraphs: | 9 |
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| Date of hearing: | 20 March 2025 |
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| Solicitor for the Appellant: | The appellant did not appear |
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| Solicitor for the First Respondent: | Ms A Wilford of Sparke Helmore |
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| Solicitor for the Second Respondent: | The second respondent filed a submitting notice save as to costs |

ORDERS

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|  | | NSD 540 of 2021 |
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| BETWEEN: | BHARAT THAPA  Appellant | |
| AND: | MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS  First Respondent  ADMINISTRATIVE APPEALS TRIBUNAL  Second Respondent | |

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| order made by: | GOODMAN J |
| DATE OF ORDER: | 20 MARCH 2025 |

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The appellant pay the first respondent’s costs of the appeal, fixed in the sum of $4,000.
3. The first respondent serve a copy of these orders and reasons for judgment on the appellant, forthwith upon receiving them.
4. The name of the first respondent be amended to “Minister for Immigration and Multicultural Affairs”.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

GOODMAN J:

1. The appellant, a citizen of Nepal, appeals from orders made by the (then) Federal Circuit Court of Australia made on 14 May 2021. By those orders, the reasons for which were set out in *Thapa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FCCA 1017, the primary judge dismissed an application for judicial review of a decision of the second respondent made on 7 February 2020, which affirmed a decision of a delegate of the first respondent (**Minister**) made on 20 November 2019 to cancel the appellant’s visa.
2. The appellant’s notice of appeal was filed on 9 June 2021. On 10 June 2021, a Registrar of this Court made a series of orders for the preparation of the appeal for hearing, including an order that the appellant file and serve a written outline of submissions no later than ten business days before the hearing date. The appellant did not comply with that order.
3. On 16 and 17 December 2024, the Court notified the appellant – by email and by post sent to the electronic and physical addresses he had provided to the Court – of the date, time and location of the hearing scheduled for today. The notification by post occurred after the email “bounced back”.
4. Ms Wilford, who appeared for the Minister, informed the Court that emails sent by her office to the appellant had also “bounced back”, and that her office had sent notification of the hearing to the appellant by post. The evidence tendered by Ms Wilford establishes that:
5. on 21 and 24 February 2025, the solicitors for the Minister sent letters to the appellant at the address the appellant had provided to the Court notifying the appellant of the date, time and location of the hearing scheduled for today; and foreshadowing the possibility of a dismissal application if the appellant did not appear at the hearing; and
6. on 28 February 2025, the solicitors for the Minister sent to the appellant at another address, being an address which I was informed had been found in the Department’s records. Again, the letter notified the appellant of the date, time and location of the hearing; and foreshadowed the possibility of a dismissal application if the appellant did not appear at the hearing.
7. The appellant did not appear at the hearing today.
8. Ms Wilford moved pursuant to s 25(2B)(bb)(ii) of the *Federal Court of Australia* ***Act*** *1976* (Cth) and r 36.75 of the *Federal Court* ***Rules*** *2011* (Cth) for the dismissal of the appeal. Section 25(2B)(bb)(ii) of the Act provides that a single judge exercising the appellate jurisdiction of the Court may dismiss an appeal because of a failure of an appellant to attend a hearing relating to the appeal. Rule 36.75 provides in so far as is presently relevant:

**36.75   Absence of party**

(1)  If a party is absent when an appeal is called on for hearing, the opposing party may apply to the Court for an order that:

(a)  if the absent party is the appellant:

(i)  the appeal be dismissed; or

(ii)  the hearing be adjourned; or

(iii)  the hearing proceed only if specified steps are taken; or

...

(2)  If a hearing proceeds in a party's absence and during or at the conclusion of the hearing an order is made, the party who was absent may apply to the Court for an order:

(a)  setting aside or varying the order; and

(b)  for the further conduct of the hearing.

1. As noted above, the appellant failed to attend the hearing. Thus, the Court’s discretion to dismiss the appeal was enlivened. In circumstances where the appellant has not filed submissions as directed and was put on notice – via (at least) the contact details provided by the appellant to the Court – of the details of the hearing, an order for dismissal is appropriate. It will remain open to the appellant to make an application under r 36.75(2) if there are circumstances, presently unknown to the Court, which justify such an application. Costs should follow the event.
2. The Minister seeks an order fixing costs in the sum of $4,000. The Court’s discretion with respect to costs is broad and includes the making of a lump sum order for costs. The making of such an order is appropriate in the present case given that: it accords with the Court’s preference for lump sum costs orders (*Costs Practice Note* at [3.3] and [4.1]; *Paciocco v Australia and New Zealand Banking Group Limited (No 2)* [2017] FCAFC 146; (2017) 253 FCR 403 at 406 to 407 ([16] to [19]) (Allsop CJ, Besanko and Middleton JJ); it will save the parties the time and costs attendant upon a taxation process; the costs claimed by the Minister appear to be proportionate to the complexity of the issues raised in the proceeding; and the amount sought is less than the amount that could be claimed in a short form bill for an appeal involving a migration decision that is dismissed before hearing ($5,278 as set out in the Rules, Schedule 3, Item 15.1).
3. I will make orders accordingly.

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| I certify that the preceding nine (9) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Goodman. |

Associate:

Dated: 20 March 2025