

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
MISC.73/2004

IN THE MATTER
of the Cook Islands Electoral Act 2004
and the General Elections held on
7 September 2004

AND

IN THE MATTER
of a Petition by **NORMAN GEORGE** of Titikaveka, Candidate

Mr Samuels for Petitioner
Mr Little for Candidate Eugene Tatuava
Mr McFadzien for Electoral Office

Monday 11th October 2004

BACKGROUND

This Petition by Norman George the unsuccessful Candidate in the September Election for the Tengtangi/Aeora/Ngatiarua electorate in the island of Atiu alleges four reasons why this Court should intervene and re-assess the final result of the election in this electorate. The first complaint is that Eugene Tatuava and/or his campaign officials corruptly treated electors by supplying free beer on numerous occasions as well as supplying food to certain named electors.

The second complaint is that there were inadequate procedures in handling and caring for the ballot box and ballot papers on election day and the days following up to the deposit of the electoral voting papers in the office of the Chief Electoral Office.

The third complaint is of interference with voters on election day.

The fourth complaint is that the said Eugene Tatuava and/or his campaign officials defamed the Petitioner Norman George by displaying at various times in public places in Atiu certain cartoons and printed material that lampooned Mr George.

At the hearing in Atiu Mr Little made applications in terms of the proviso to s.92(4) of the electoral Act ("the Act") for leave to advance evidence concerning the conduct of Mr Norman George during the election campaign which, if proven could disqualify him as a candidate.

I intend to deal with the complaints in the order they appear in the Petition.

- (1) The Treating,
- (2) The electoral Procedures,
- (3) The interference,
- (4) The defamatory publications.

Treating

Prior to commencement of evidence the Court made it clear that because of the seriousness of the allegations, (a finding of corrupt treating must be referred to the Commissioner of Police in terms of s.100 of the Act) the Court would be strict as to admissibility of evidence.

The first witness, the Petitioner Mr George, alleged that thousands of dollars of free beer had been provided by Mr Tatuava and/or his campaign officials, to electors with a view to influencing their voting. Mr George did not see this happening but gave evidence of seeing people passing his residence going to and from one of the alleged treating places (Kopeka Lodge) and their demeanour particularly when returning therefrom.

Mr Tapuni Williams gave evidence of his frequent attendances (up to five during the campaign) at gatherings where he consumed up to 18 cans of beer. In his evidence he never saw anyone paying for their drinks – but didn't know whether they had or not. There were women present – he was never spoken to about election or voting matters – he had the feeling he was expected to vote for Mr Tatuava. The beer was handed out from chilly bins to all who wanted to drink. Mr Williams was never asked to pay for his beer on these occasions.

The evidence of supplying food was that Mrs Tatuava wife of Eugene Tatuava took cakes to one home and a tray of food to another on the Sunday preceding the elections. This was

father's day and evidence was given that when entering one of the homes she said "happy father's day" – she had never been to this home before bearing food on father's day. There was evidence that she was not welcome in the second house as that family supported Mr Norman George.

The Petitioner attempted to prove that pallets of beer were landed at Atiu for and on behalf of Mr Eugene Tatuava.

When Mrs Helen Tatuava gave her evidence she was shown an invoice for \$5,494.95 from Cook Islands Liquor Merchants. This document is addressed to Tatuava/Atiu. Mrs Tatuava denied that this invoice was to her or her husband pointing out that she was privy to her husband's financial affairs and as well carried out the accountancy work for companies they owned. Her evidence was that her husband did not to her knowledge purchase the beer on the invoice and that the invoice should have been addressed to T & J Store on Atiu. Mrs Tatuava was adamant that the family business Raro Freight Services was not the purchaser of the beer and did not pay for it.

Insofar as the delivery of food, Mrs Tatuava agreed that the evidence of the witness for the Petitioner were correct but explained that notwithstanding her saying "happy father's day" the cake was for a maniri to the island. She also explained the other food delivery was to a friend of the family and had nothing to do with treating. Mr Glassie and Mr Kokaua (Tangee) did not disagree with Mrs Tatuava.

There was evidence from defence witness as to the drinking and persons present that confirmed some of what Mr Williams has said though evidence emphasized that the free distributing was after fishing expeditions and that there were collections for beer at other times.

Mr Little led evidence to show that the persons mentioned in the Petition as being recipients of treating were all members of the campaign committee of Mr Tatuava.

Evidence was given by Mrs Aere Tua and Mr Wichman as to the ordering/dispatching to Atiu and paying for the pallet of beer. This evidence touched lightly on Eugene Tatuava as he is apparently an uncle of John Porio of T & J Store the purchaser of the beer.

In final submissions Mr Samuel concentrated on the allegations of treating. He suggested that the evidence of Mr Williams was such that, the Court taking into account the large amount of beer (92 cans over five sessions during the campaign) with other evidence, Mr Toki (12 plus cans for at least two sessions) was sufficient, because Mr Williams had not paid nor been asked to pay, to establish corrupt treating. The Court was referred to the New Zealand case *Re Wairau Elections* [1919] 9 NZLR. 489 as to the standard of proof required. In that case the standard was that for criminal prosecution. A further case *re Mitiaro* [1979] 1 NZLR S1 adopted the lesser civil action standard.

With respect to the food delivered by Mrs Tatuava Mr Samuel submitted she knew there were electors in the homes she visited and her purpose was to influence these persons to vote for her husband, this was corrupt treating.

Insofar as the interference with the two school girls, the Electoral Office/ballot box allegations and the charge of defamatory conduct there were no submissions.

Mr Little submitted that with respect to Schedule A (1) of the Petition in the supplying of free beer to the eighteen persons mentioned in the Schedule – there was no or insufficient evidence for the Court to find the allegations proved.

When dealing with the providing of food he submitted that the evidence demonstrated Cook Islands hospitality rather than corrupt treating and the Court should rule accordingly.

Mr Little made various submissions with regard to alleged defamation arguing that there was no defamation proven. A significant point raised by him was the lack of evidence that the published cartoons and other matters lessened Mr George's standing in the community (an essential in libel cases).

Mr McFadzien for the Chief Electoral Officer submitted that the evidence before the Court demonstrated that notwithstanding some procedural irregularities (scrutineers not signing the sealed voting parcels) the evidence showed a trail from sealing to the handing over to the Chief Electoral Officer whereby there could not have been improper handling of voting papers. He stated that in no way was the results of the elections affected.

Decision

Mr Little's submissions in respect of the treating is correct. There is no evidence before the Court that only one of the eighteen persons named in the Petition without paying drank to excess and thus were corruptly treated.

I find that there was drinking on the various occasions when the campaign committee gathered. At times there were others present that may not have been campaign committee supporters but there is no evidence that what beer they may have consumed was free; the other persons are not referred to in the Petition

The Petitioner's evidence as to corrupt treating by supplying beer rests entirely upon the evidence of Mr Williams who consumed large quantities (up to 18 cans) on the occasions when the campaign workers of Mr Tatuava had their gatherings. The Petition alleges treating involving eighteen persons not including Mr Williams and who apparently were all part of the Tatuava campaign committee.

None of the eighteen people named in the Petition were called by the Petitioner to give evidence and though there is evidence of drinking there was no evidence placed before the Court by the Petitioner of excessive drinking without paying by any one of the eighteen named in the Petition. The Court also records that there was no attempt to amend the Petition to include Mr Williams as being the recipient of corrupt treating. It can only be assumed that the Court is expected to take the evidence of his excessive drinking without paying as evidence that the eighteen persons named in the Petition were also drinking excessively and not paying. I am not prepared to make this assumption as the only evidence of excessive beer drunk by any of the eighteen cited in the Petition is, on his own evidence, Roland Toki

drinking twelve plus cans a session, but, he was adamant that he supplied his own drink. Mr Samuels inferred otherwise but there is no evidence before me contradicting Mr Toki.

I record that if Mr Williams' name had been added to the petition taking into account his evidence the Court would not have found corrupt treating in respect of him; excessive drinking on his part was proved but including all evidence before the Court there was insufficient to invoke s.98(1) or s.98(2) of the Act. Concerning s.98(3), Mr Williams on his own evidence apparently supported Mr George.

With regard to the Petitioner's attempt to prove that Mr Tatuava had purchased two large consignments of beer which inferentially was given to electors.

I find that it was not proven that Mr Tatuava had anything at all to do with this beer. The evidence established that T & J Stores on Atiu purchased the beer. There was an invoice produced that had the name Tatuava as the purchaser; this was explained by the supplier as a mistake on the part of his manager.

Mr Samuels suggested that the Court should read something sinister into the fact that the father of Mr Porio owner of T & J Stores was on the Tatuava campaign. I am not prepared to do this.

Mr Samuels also submitted that Mr Tatuava not giving evidence in respect of the treating could be taken into account by the Court suggesting he had something to hide. I have considered this and believe that a stronger inference from the evidence could be Mr Tatuava, or his counsel, considered there was no case to answer.

I find that in respect of Treating by supplying free beer, the Petitioner has not proven on the balance of probability that corrupt treating occurred.

Moving to the supplying of food; Mrs Tatuava gave an explanation protesting her innocence and this was confirmed as to the Glassie home by Mr Glassie and Mr Tangee Kokaua.

I believe Mrs Tatuava's explanation as to both incidents and in considering these visits and the quantity of food involved I take on board what Speight J. had to say in the re Cowan Petition Case in 1983;

"...this trifling incident has been over-blown by the hot house atmosphere of political intrigue and recrimination...". It is noted that in the Cowan case the Petitioners also established that Mr Cowan had sometime after giving the electors twisties said he would be pleased if they voted for him.

I find that nowhere does the evidence given point to an intention by Mrs Tatuava to corruptly treat any one of the voters in the homes she visited.

Dealing now with the evidence of interference with the two school girls. I accept their evidence and believe it was most improper on the part of the adult to do and say what she did. Having said this I cannot extract anything from the incident that would affect the position of Mr Tatuava.

Mrs Rouru Māteariki owes both of these young ladies an apology.

Moving to the alleged election irregularities set out in Schedule "B" of the Petition I accept what Mr McFadzien has to say. No way were the results of the election compromised and the Court disregards the proven non compliance with procedures. (s.97 of the Act).

Notwithstanding this finding, I record that I have referred the evidence given before me as to prior knowledge of the results of the elections to the Commissioner of Police for his action. (s.100 of the Act).

Concerning the Petitioner's complaint that Mr George was defamed and therefore the Court should invalidate the election results. I find that the evidence clearly establishes Mr Tatuava's campaign workers exposed the cartoons and other printed material on the Atiu Hall and the Government Administration building. It was published with the intention of embarrassing Mr George and from his reaction then and since achieved the desired result. I am aware that most if not all the material has been previously published in newspapers.

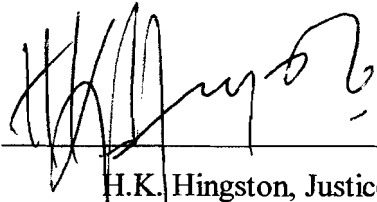
Mr Samuels in his final statements made no mention of these matters. In light of this and weighing up the evidence before the Court I agree with Mr Little that Mr George was not defamed. I note that there is no evidence that the published material affected any other persons' opinion adversely as to the qualities, character and status of Mr George.

I find defamation as alleged in the Petition has not been proven.

The Court has been asked to rule whether, because a Petition complaining about Mr George's conduct which was struck out because no grounds were established, prevent the invoking of the proviso to s.92(4) of the Act.

In light of the Court findings above I do not believe it is necessary to decide this point. Having said this and because circumstances meant evidence was heard prior to this ruling on jurisdiction I consider it fair that I record my view that the Respondent did not establish impropriety on the part of Mr George when he visited the Simpson home prior to the election. I believe the evidence of Mr George and Mrs Nane George as to what happened that evening. I consider Mr George far too wily/careful a campaigner to have made the promises alleged by the Respondent.

I conclude this decision determining that in view of my finding in respect of each of the causes set out above the Petition of Norman George concerning the Tengtangi/Areora/Ngatiarua Electorate in Atiu should be dismissed and I dismiss the petition accordingly.



H.K. Hingston, Justice