

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(ELECTORAL COURT)

MISC NO. 83/06

IN THE MATTER of Section 92 of the Electoral Act
2004

AND

IN THE MATTER of an election of Members of
Parliament of the Cook Islands
Held on Tuesday the 26th day of
September 2006

BETWEEN

KIRIAU TUREPU of Matavera,
Planter

Petitioner

AND

CASSEY TEREAPII EGGLETON
Of Matavera, Company Director

First Respondent

AND

NOOAPII TEAREA, Deputy Chief
Electoral Officer

Second Respondent

AND

TANGA MORRIS, Returning
Officer for the Constituency of
Matavera

Third Respondent

AND

TAGGY TANGIMETUA, of
Takuvaie, Registrar of Electors

Fourth Respondent

AND

BRIAN TERRENCE HAGAN
Chief Electoral Officer

Fifth Respondent

Counsel:

Mr Puna for Petitioner
Mr Hood for Respondent
Mr Elikana/Mr McFadzien for Electoral Office
Date of Decision: 27 October 2006

COSTS JUDGMENT OF WESTON J

1. The Petitioner in this Electoral Petition, represented by Counsel Mr Puna, has withdrawn the Petition. As a consequence, the cross petition also falls away.
2. By memorandum dated 25 October 2006, the Court was advised that the first allegation in the petition would not be proceeded with. This decision followed the giving of the Court judgment in relation to the Akaoa Petition in 87/06.
3. Mr Hood for the First Respondent accepted that the Petitioner acted responsibly in withdrawing that part of the Petition. That concession was properly made. It seems to me that the Petitioner, as soon as possible after considering that judgment, acted to remove those parts of it from consideration by the Court as were determined in the Akaoa decision. That then left a bribery allegation for consideration by the Court.
4. The bribery allegation concerns two electors who were alleged to have been bribed by receiving gifts, totaling approximately \$1,000.00. Mr Puna advises the Court that yesterday he made the decision that that allegation would not be proceeded with and he sent a fax to Mr Hood advising him of that.
5. Yesterday was Gospel Day and I cannot speculate when Mr Hood received that fax. Suffice it to say the decision was announced to the Court this morning that the Petition would be withdrawn in its totality. Mr Hood has now filed a memorandum and elaborated upon that in his oral submissions. He has set out the costs incurred by the First Respondent in considering the petition and then

preparing the cross petition. The total including that and expenses is \$4,434.99. In addition, Mr Hood submits that the Petitioner has incurred costs of \$2,290.00 representing the petitioner's costs in participating in the hearing that the Court conducted in the Akaoa petition and which resulted in the judgment I have already mentioned.

6. Mr Hood goes on to seek 66% of each of those two amounts. He makes the point that, in addition, the First Respondent and her committee have incurred time and costs as well as adverse publicity. However, no costs are sought in relation to that specific item.
7. Mr Hood submits that the Court should take a firm approach on the question of costs to discourage future petitioners from making spurious allegations.
8. Mr Elikana has made submissions on behalf of the Second, Third and Fourth and Fifth Respondents seeking costs of \$1,000.00. Mr Puna has replied to these submissions emphasizing that the Petitioner acted responsibly and reasonably and that should be taken into account when I fix costs. He has also submitted that the costs of the Electoral Office appeared to be high.
9. The question of costs has already been considered by the Court in its minute dated 13th October when the question of security for costs under Section 93 of the Act was being addressed. At that time, the Court formed the view that security for cost should be set at an amount intended to cover all costs that would be incurred. It was made clear that, just because a certain amount of cost was to be paid by way of security, that did not necessarily determine the issue of costs. The amount of security that was ordered in relation to the Matavera Petition was the sum of \$5,000.00. It was reasonably anticipated thereby that this sum would provide a sufficient pool from which costs would be paid assuming the petition went the full distance.

10. I recall submissions made by counsel, although with the exception of Mrs Browne, that generally speaking \$5,000.00 would be a sufficient sum of security to cover costs in the ordinary course of hearing an electoral petition.
11. I have no reason to doubt that the First Respondent has incurred the costs referred to by Mr Hood. I also accept that in responding to allegations of bribery a petitioner or any party is entitled, indeed, expected, to take them seriously. However, I believe the amount of costs sought is higher than should be ordered at this stage. Section 101 of the Act which governs the question of costs does not require the Court in all cases to order indemnity costs. It remains an assessment by the Court to be made on the facts of each case and in the Court's discretion. Ultimately that will be a matter of judgement in each case, not necessarily capable of measurement in fine scales.
12. I accept that Mr Puna acted responsibly first in withdrawing the allegations as to the qualifications of electors and then at a slightly later date, and perhaps later than is desirable, the final bribery allegations were also withdrawn. I think he is entitled to a credit for that and indeed it is a matter of good policy to encourage petitioners to withdraw petitions when they appreciate that they may not be successful if the matter goes to a hearing.
13. It seems to me that simply ordering costs without recognition of that is likely to encourage parties to go on to unnecessary hearings because they have nothing to lose. The Court in its approach to costs should encourage petitioners to recognize the desirability of bringing proceedings to an end as soon as they are able to do so. Consequently, I intend recognizing that in fixing costs now. The First Respondent is entitled to costs and is certainly entitled to recover the office expenses that have been referred to of \$80.00. In addition to that, I order the Petitioner to pay the sum of \$2,000.00 to the First Respondent. I order the Petitioner to pay the sum of \$500.00 to the Second, Third, Fourth and Fifth

Respondents. I recommend that these costs be paid out of the security for costs that has been paid into Court with the balance then to be returned to the Petitioner.

Judge