

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

Misc No: 88/06

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 September
2006

BETWEEN **TEKAOTIKI MATAPO** of
Titikaveka, Candidate
Petitioner

AND **ROBERT WIGMORE** of Titikaveka,
Planter
First Respondent

AND **NOOAPII TEAREA** Deputy Chief
Electoral Officer
Second Respondent

AND **BRIAN TERRENCE HAGAN** Chief
Electoral Officer
Third Respondent

Date: 27 April 2007 (New Zealand time)

JUDGMENT AS TO COSTS

[1] In my Judgment issued 1 December 2006 I set out my preliminary views in relation to costs as follows:

"[96] On the first ground of the Petition, the Petitioner's challenge has been upheld.

[97] The Petitioner failed in his bribery allegations. The First Respondent failed in his challenge to the residency qualifications. I believe these balance each other out in terms of costs.

[98] *Prima facie, the Petitioner is entitled to costs in relation to the first ground in the petition. If the parties cannot agree upon these they are to supply memoranda as follows. The Petitioner is to lodge his within 14 days and the First Respondent 14 days thereafter. Adjustments will need to be made for the Christmas vacation.*

[99] *I do not believe that costs should be payable to or by the Second and Third Respondents but I am willing to receive memoranda if necessary. Counsel should agree upon an appropriate timetable consistent with the exchange of memoranda set out above."*

- [2] Subsequent to that I received submissions from the parties as I now describe. Mr George for the petitioner advised that costs of \$6,975 were incurred. In paragraph 2 the submission said:

"For the purposes of simplicity we will calculate our claim on the full fees of one counsel and arrange disbursements amongst ourselves later."

I am not entirely sure what this means.

- [3] Mrs Browne responded on behalf of the first respondent setting out his costs in relation to the first argument (as to qualification) of \$4,653.27. In relation to the bribery allegation costs incurred were \$7,125.93.
- [4] Mrs Browne explained that she had spoken with Mr George who had advised her that the figure of \$6,975 referred to in his memorandum related both to the qualification and bribery arguments. In addition, those costs must also have related to Mr Moore's qualification to be a voter in the Titikaveka constituency. Mrs Browne has not referred to this and I assume that the costs specifically mentioned by her do not include costs incurred by her client in advancing the allegation that Mr Moore was not qualified to be a voter.
- [5] Mr George responded to Mrs Browne's submissions simply to seek a refund of the security for costs paid in by the petitioner.
- [6] Having considered these submissions, I see no reason to part from the preliminary view that I set out in my earlier Judgment and which I have

repeated above. In terms of my appreciation of the case I believe that the bribery allegations and the challenge to Mr Moore's residency qualifications were roughly comparable and cancel each other out. From my point of view, the issue as to whether the successful candidate had resigned from the Board of the CIIC was the most difficult and time consuming issue to resolve. The petitioner was successful in relation to that allegation and as a result a by-election was called.

- [7] I have been assisted in reaching my conclusions by the Judgment of Nicholson J given in relation to the Manihiki petition (85/06). I have taken into account the factors set out in that Judgment.
- [8] I direct that the first respondent pay to the petitioner the sum of \$3,500 by way of costs and disbursements. In addition, I direct that the security for costs be repaid to the petitioner.
- [9] In line with my earlier view the second and third respondents have not sought costs and I confirm that costs are not payable to or by the second and third respondents.

Weston J

