

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

Misc No: 84/06

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| IN THE MATTER | of section 92 of the Electoral Act 2004 |
| AND | |
| IN THE MATTER | of an election of members of Parliament held on Tuesday 26 th September 2006 |
| BETWEEN | SAM CROCOMBE Petitioner |
| AND | ALBERT NICHOLAS First Respondent |
| AND | NOOAPII TEAREA Second Respondent |

Date: 24 April 2007 (New Zealand time)

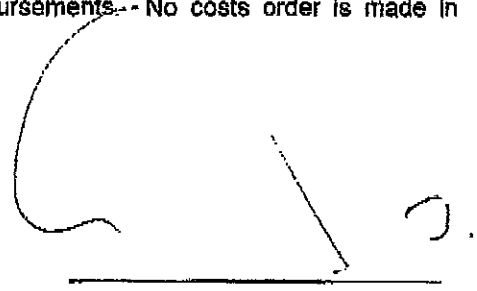
JUDGMENT AS TO COSTS

- [1] The petition failed in the sense that Mr Nicholas (the first respondent) remains as the successful candidate. Nevertheless, the petitioner's challenge to a number of the votes was successful.
- [2] Allegations of bribery and corruption were withdrawn. But in no sense do I conclude that the petition falls within the description in section 101 of "*vexatious conduct, unfounded allegations, or unfounded objections...*".
- [3] In no sense, either, do I conclude that the issues raised by the cross petition fall within such description.
- [4] Prima facie, costs must follow the event. Mr Mitchell (for the Petitioner) submits this is not a case where it is appropriate for costs wholly to follow the event because the issues canvassed in the petition related to matters beyond the control of the petitioner and the first respondent.

- [5] The first respondent has incurred costs and expenses of \$5,380 and, while it is not formally stated, I assume he seeks costs in that amount.
- [6] The second respondent has incurred costs of \$5,450 and asserts it is entitled to indemnity costs. It denies any liability on its part for costs to other parties. The submissions assert that *"administrative decisions by the Electoral Office staff were difficult and reasonable in the circumstances."*
- [7] The petitioner denies that any costs should be payable by him to the Electoral Office. So far as the first respondent is concerned the petitioner submits that a total of \$2,500 to \$3,000 would be reasonable but that at least half should be met from public funds.
- [8] This petition went the full distance. The hearing occupied an 11 hour period and 28 witnesses gave evidence. There can be no discount for an early withdrawal of the petition. To the extent that allegations of bribery and corruption were withdrawn this is already recognised in the fact that the hearing was concluded in the period that it was.
- [9] I have read and respectfully endorsed the decision of Nicholson J given in relation to costs in the Manihiki Petition (85/06). Having regard to the factors set out by him in paragraph [55] I believe that the quantum of costs and disbursements payable by the petitioner to the first respondent should be \$4,500.
- [10] I now address the role of the Electoral Office (as I call it for convenience).
- [11] In the present case a number of decisions made by the Electoral Office were under challenge and I upheld some of those challenges. In no sense, though, did I conclude that the Electoral Office acted unreasonably.
- [12] I also note that a significant number of electors were found by the Court to be residents in other constituencies. Again, I do not think that can be described as the fault of the Electoral Office. The Act establishes several procedures, including that of objections, which shows that the Electoral Office is only one player in these matters.
- [13] While I conclude that the Electoral Office did not act unreasonably, its actions have, in part, contributed to the costs incurred by the other parties.

[14] In paragraph [54] of the aforementioned costs judgment, Nicholson J set out the principles upon which he believed the costs of the Electoral Office should be assessed. On the basis of the general rule stated by Nicholson J I see no reason to order costs in favour of the Electoral Office.

[15] I order that the petitioner is to pay the first respondent the total sum of \$4,500 by way of costs and disbursements. - No costs order is made in favour of the Electoral Office.

A handwritten signature in black ink, appearing to be 'Weston J', is written above a horizontal line. The signature is somewhat stylized and includes a small flourish to the right.

Weston J