

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

**MISC. NO. 30/2018**

**IN THE MATTER** of Parts 7 & 8 of the Electoral Act  
2004

**AND**  
**IN THE MATTER** of a General Election for members  
of the Parliament of the Cook  
Islands

**AND**  
**IN THE MATTER** of the election for the constituency  
of Rakahanga

**BETWEEN** **TINA PUPUKE BROWNE,**  
Candidate  
Petitioner

**AND** **TOKA HAGAI,**  
Candidate  
Respondent

Dates of Hearing: 10, 11 and 13 August 2018

Counsel: Messrs I Hikaka and B Marshall for Petitioner  
Mr B Mason for Respondent  
Ms K Bell for the Chief Electoral Officer (9-9.30am on 10 August 2018 only)

Results Judgment: 7 September 2018

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**RESULTS JUDGMENT OF HUGH WILLIAMS, CJ**

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[WILL0498.dss]

**Introduction**

[1] A full Judgment in relation to the Rakahanga petition is in draft but since it has become obvious that it will take a little time to produce in final form, it has been decided to issue this Judgment in order that the result of the petition will be known, with the draft to be converted to a Reasons for Judgment which will be issued as soon as it can be finalised.

[2] The paragraph references in what follows refer to the amended petition for inquiry dated 7 August 2018<sup>1</sup>.

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<sup>1</sup> All dates in this judgment will refer to 2018 unless otherwise specified.

**24 and 31 May and 7 June**

[3] The allegations in relation to the gatherings on 24 and 31 May and 7 June<sup>2</sup> were alleged to amount to treating under s 89 of the Electoral Act 2004<sup>3</sup> by the respondent or his agents in the ways set out in the amended petition.

[4] For the reasons which will appear, although the actions of the Cook Islands Party Planning Committee on Rakahanga are held to be actions by Mr Hagai's electoral agents in organising gatherings at least one significant purpose of which was political – namely to assist towards Mr Hagai's re-election to Parliament – the actions and contributions of the Planning Committee are held not to have amounted to treating under s 89 and accordingly the allegations of treating in paragraphs 1-4 and 6-18 of the Amended Petition fail.

[5] The allegations in paragraphs 5 and 19 of the Amended Petition are that the Respondent committed the electoral offences of treating under s 89 or bribery under s 88 of the Act by stating at the gathering on 24 May that after voting for him the electors could have a barbecue with him.

[6] Those allegations are held, for the reasons which will appear, not to amount to bribery or treating, the latter in part because Mr Hagai's actions came within the proviso to s 89.

[7] Those allegations accordingly also fail.

**25 May and 1 and 8 June**

[8] Broadly put the allegations concerning 25 May and 1 and 8 June<sup>4</sup> were that a number of named employees of the Rakahanga Island Government were paid for those days when they did not work as a result of the gatherings on the previous days, that action being pleaded to amount to bribery.

[9] Common to all those allegations was that, in paying those named employees, the Executive Officer of the Rakahanga Island Government was acting as Mr Hagai's electoral agent.

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<sup>2</sup> Paras 1-18 of the Amended Petition

<sup>3</sup> "the Act"

<sup>4</sup> Paras 20-32 of the Amended Petition

[10] The pleaded agency of the Executive Officer was not proved. The Executive Officer did not pay the employees as Mr Hagai's agent, particularly because he was the returning officer for the Rakahanga constituency, knew of the provisions of s 5(6) and accordingly maintained a neutral stance.

[11] Additionally the pleaded absences were not all proved to the required standard.

[12] On those grounds all the allegations in paragraphs 20-32 of the Amended Petition fail.

### **12-15 June**

[13] Again put broadly, the allegations in the Amended Petition<sup>5</sup> were that the caretaker Prime Minister, Hon Henry Puna, made a speech on Rakahanga on 12 June at Mr Hagai's instigation at which he declared 14 and 15 June to be public holidays on the island and that, as a result, a large number of Island Government employees did not work on those days but were paid nonetheless.

[14] It has been concluded that although the possibility that 14 and 15 June might be public holidays on Rakahanga was raised with the Prime Minister during a question and answer session after his speech, the Prime Minister knew he had no legal power to declare public holidays, did not do so and any interpretation by any of his hearers that those days were to be public holidays on Rakahanga was a misinterpretation for which the Prime Minister as Mr Hagai's electoral agent was not responsible. The allegation accordingly fails.

[15] Additionally part of any payment to the Island Government employees for 14 June when they were absent from work was protected by s 50 and the Amended Petition was accordingly misdirected to that extent.

[16] The allegations concerning 12-15 June also fail on the facts; a significant proportion of Island Government employees did work on 14 and 15 June, even though they may not have been employed at locations observed by the petitioner and her witnesses.

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<sup>5</sup> Paras 33-38

**Result**

[17] All the allegations in the Amended Petition having failed, the petition is dismissed.

[18] The required s 104 certificate confirming Toka Hagai as the Member of Parliament for Rakahanga for the next term of Parliament will be attached to the Reasons for Judgment.

[19] All issues of costs will be dealt with in a consolidated judgment once the current round of electoral petitions has been concluded.

A handwritten signature in black ink, appearing to read 'H Williams', written in a cursive style. The signature is positioned above a horizontal line.

**Hugh Williams, CJ**