

**IN THE HIGH COURT OF FIJI**

**At Suva**

**Civil Jurisdiction**

**MISCELLANEOUS ACTION NO. 0029 OF 2006**

In the Matter of **Article 73(1) and (2)** of the  
Constitution of Fiji

**And**

In the Matter of the **Electoral Act 1998 And**

In the Matter of the Parliament Election for the  
Suva City Open Constituency Seat held from  
the 6th May to 13th May 2006 pursuant to the  
Constitution of Fiji to the Parliament of Fiji.

**And**

In the Matter of a Petition by **TOM RICKETS**  
of 14 Beach Road, Suva, Banker, in the  
**Court of Disputed Returns**

**Between:**

**TOM RICKETS**

**Petitioner**

**- and -**

**INOKE DEVO**

**First Respondent**

**SEMESA KARAVAKI**

**Second Respondent**

**IVIISAELE WELEILAKESA**

**Third Respondent**

**Counsel** : **Mr. R. Chaudhry & Mr. A. Singh for the Petitioner  
Ms. M. Raquita-Vuniwaqa for First Respondent  
Mr. J. Apted & Ms. N. Basawaiya for the Second  
Respondent  
Mr. N. Lajendra for the Third Respondent**

**Dates of Hearing** : **27th and 30th October 2006**

**Date of Ruling** : **16th November 2006**

### **RULING**

- [1] Section 73 of the 1997 Constitution of the Republic of the Fiji Islands requires that any election petition "must be brought within six weeks of the declaration of the poll". This ruling considers the meaning of the word "brought". It is of vital importance to Tom Rickets, the petitioner, an unsuccessful candidate in the Suva City Open Constituency in the May 2006 Elections, and Misaele Weleilakeba who was, on 16th of May, declared the successful candidate in that election.
- [2] There is agreement upon a number of important facts : the declaration of the poll took place on 16th of May, the period of six weeks or forty two days ran from 17th of May (section 51 (a) Interpretation Act), the six weeks or forty two days expired on 27th of June 2006, the election petition is stamped "High Court of Fiji, Suva - Filed 28th June 2006".
- [3] The respondents say that the petition was filed one day out of time, the court has no power to extend time and therefore the petition must be struck out.
- [4] Section 145(1) the Electoral Act 1998 states that a petitioner must deposit with the Registrar of the court the sum of \$500.00 as security for costs "at the time of filing a petition". The respondents say that this did not happen either, it is a mandatory provision, there is no power to extend time and therefore for this reason also the petition must be struck out.

- [5] The petitioner rejects these arguments. He states that all the necessary documents and monies were brought to the court before 3.00 p.m. on 27th of June and that any delay in the lodging of documents, stamping of documents and receipting of monies were of the court registry's doing and did not and could not affect the fact that the petition, associated documents and required payments were brought within the prescribed time.
- [6] This issue necessarily required the making of affidavits and the hearing of evidence. I have before me the affidavits of Vijay Kiran Archari (17/10/06), Neelupha Khan (17/10/06) Ronald Rajesh Gordon (17/10/06) for the petitioner and Pranesh Chand Sharma (16/10/06 and 18/10/06) and CD. Singh (24/10/06) from the Court Registry. Vijay Archari, Pranesh Sharma and CD. Singh gave evidence. I also have before me the written submissions of the second respondent and petitioner, together with their authorities. The first and third respondents adopted the submissions and arguments of the second respondent. The first respondent is the Returning Officer for Suva City Open Constituency and the second respondent is the Supervisor of Elections.
- [7] The jurisdiction being exercised in this case is that of the "Court of Disputed Returns". Section 73(1) of the Constitution reads:
- "The High Court is the Court of Disputed Returns and has original jurisdiction to hear and determine:
- (a) a question whether a person has been validly elected as a member of the House of Representatives ; and
- (b)..."

- [8] This section comes in the Constitution in "Chapter 6 - The Parliament" within "Part 4 - Both Houses". The section is not set within "Chapter 9 - Judiciary". This court is exercising a jurisdiction which would, but for section 73, be exercised by Parliament. The reasons for this have been set out in several judgments in this jurisdiction and elsewhere, it is pertinent to note that section 73(2) states "the validity of an election or return may be disputed by petition addressed to the Court of Disputed Returns and not otherwise". This is an exclusive jurisdiction. Further, the greatest of care must be taken as "a determination by the High Court in proceedings under paragraph 1 (a) is final", (Section 73(7) and see the judgment of the Fiji Supreme Court in Krishna Prasad v. Rupeni Nacewa, ... (Civil Appeal 1/2002)).
- [9] The Electoral Act 1998 is the legislation governing electoral matters. The preamble reads, 'An Act relating to elections for the House of Representatives'. Part 7 is entitled "Court of Disputed Returns" and deals with the bringing and hearing of election petitions.
- [10] Section 160 of the Electoral Act states:
- "(1) The Chief Justice may make rules of the Court, not inconsistent with this Part, to give effect to this Part and, in particular, for regulating the practice and procedure of the court, the forms to be used and the fees to be paid by parties in proceedings on an election petition.
- (2) Until rules of Court are made pursuant to subsection 1, the rules of the High Court applicable to ordinary civil actions apply, with all necessary changes, for the purposes of this part."

- [11] No rules have been made under subsection 1, therefore subsection 2 applies. It is important to note that any rules made by the Chief Justice must be "not inconsistent with this Part" and are "to give effect to this Part" and "for regulating the practice and procedure of the court ... in proceedings on an election petition".
- [12] It must therefore follow that when the rules of the High Court applicable to ordinary civil actions are utilised for election petitions any that are inconsistent with Part 7 of the Electoral Act or do not give effect to it can only be utilised with the changes that are necessary to make them so consistent and give effect to Part 7.
- [13] The respondents argue that the jurisdiction being here exercised is a very special one. Its parameters are delineated by the Constitution and Statute and, by reason of the very nature of the jurisdiction and the issues being determined within it, strict adherence to the Constitution, the Act and rules must be observed. The petitioner must do all he or she reasonably can to ensure there is compliance.
- [14] The petitioner does not disagree with this approach, but points out that issues of the greatest importance are involved, both generally and within this particular case, and that technicalities or acts or omissions beyond the control of a petitioner should not be permitted to thwart the litigation of those issues.
- [15] The summons brought by the respondents which I am now considering reads as follows :
- "1. That the Election Petition filed by the Petitioner on 28th June 2006 be wholly struck out for a failure to comply with sections 144, 145 and 147 of Electoral Act, 1998 and section 73(3)(b) of the Constitution (Amendment) Act 1997, (the Constitution).

2. That the Petitioner pays the [Respondents] the cost of this application and all incidental costs hereto on an indemnity basis.
3. ON THE GROUNDS THAT-
  - (a) the petition was filed in the Registry of the Court on 28th June, 2006, the 43rd day after the declaration of the poll contrary to section 144(e) of the Electoral Act, 1998 and section 73(3) (b) of the Constitution (Amendment) Act 1997;
  - (b) further or in the alternative, the sum of \$500.00 was not deposited with the court at the time of filing contrary to section 145(1) of the Electoral Act 1998 ; and
  - (c) under section 147(1) of the Electoral Act proceedings must not be had on the petition.

This application is made pursuant to Order 18 Rule 18(1) of the High Court Rules, 1998 and under the inherent jurisdiction of this court."

[16] Counsel for all parties agreed that as this is the respondents' summons then the onus is upon them to show that the petition was brought out of time and the security for costs was deposited out of time. However, it was also agreed that as the court stamp on the documents shows the date of filing as being one day out of time, then the evidential burden was upon the petitioner to show the petition had been brought in time and the security for costs had been deposited in time.

[17] All counsel agree that prima facie the date stamp of the court on the documents is the date of filing, it is also agreed that evidence can be brought to show that in reality the documents were filed at some other time, i will return to these points later.

[18] The courts "cannot ignore a condition precedent imposed by the legislature". Such a provision is mandatory, (for example see: Jolly v. District Council of Yorke Town (1968) 119 C.L.R. 347 at p.350). This principle is well established and accepted in Fiji.

[19] Section 73 of the Constitution reads:

"(1) (See above)

(2) The validity of an election or return may be disputed by petition

Addressed to the Court of Disputed Returns and not otherwise.

(3) The petition:

(a)...

(b) except if corrupt practice is alleged, must be brought within six weeks of the declaration of the poll."

[20] Section 142 Electoral Act 1998 is entitled "Filing of Petition" and states:

"(1) A petition must be presented by filing it in any registry of the High Court.

- (2) A petition must be served in the way in which a writ of summons is served or in such other manner as is prescribed by the relevant Rules of Court.

Section 144 of Electoral Act 1998 states:

"Every petition must -

(a)-(d) ...

(e) be filed in the registry of the Court within the period specified in section 73(3)(b) of the Constitution."

[21] Section 145 of Electoral Act 1998 states:

"(1) At the time of filing a petition the petitioner must deposit with the Registrar of the Court or a Deputy Registrar of the court \$500.00 as security for costs.

(2) ..."

[22] Section 147 Electoral Act 1998 states :

"(1) Subject to this Act, proceedings must not be had on a petition unless the requirements of section 144 and 145 are complied with.

(2) (Grants the Court some discretion over section 144(b) only)

(3)..."



- [23] I have added the underlining to the word "must" in each of these six provisions. These are mandatory provisions in the Constitution and the Act. Nowhere is there any discretion given to the Court to extend or modify these requirements, (save for Section 147(2)). It cannot be and was not argued that in any way the Rules of the High Court alter this.
- [24] This is apparent from the face of the Constitution and the Act. It has been stated many times that, on public policy grounds, rules relating to election petitions are mandatory so that there might be speedy determination, (for example *Devan Nair v. Yong Kuan Teik* [1967] 2 A.C.31 at 44-45).
- [25] Those rules are not just mandatory but set out a "code" of what is required. In the case of *Josefa Rusaqoli v. The Attorney General and Another* (Civil Action HBC0149/1994) Scott J, as he then was, considered the Electoral Decree 25/1991 and the Electoral (Election Petitions) Regulations 1992 (L/N 39/92). At page 6, he stated "In my opinion the clear intention of the Decree was to provide an exclusive mechanism to be laid down by Regulation through which election matters could be questioned. Were this not the case then the restrictions and requisites of the Regulations could simply be circumvented". Mr. Justice Scott was considering a Decree, and Regulations made thereunder, that preceded the Electoral Act.
- [26] The same principles were followed by Shameem J. in the case of *Cavubati v. Nailatikau* [1999] 43 F.L.R. 136. At pp.139-140 when considering the 1997 Constitution and the Electoral Act 1998 she stated;
- "The question is, what was the intention of the legislature? (When considering the relationship between section 73 of the Constitution and sections 144 and 147 of the Electoral Act). It appears clear from the provisions of section 73(2) of the Constitution and of

section 147(1) of the Electoral Act, that the intention of the legislature was to create a special code for challenges to election results, and for declarations that seats have become vacant.

"In *McDonald v. Keats and Others* [1981] N.S.W.L.R. 268, the Supreme Court of New South Wales, in relation to the Parliamentary Electorates and Elections Act 1912 said of a provision identical to our section 73(2) :

'... it is my view that the provision of Part V - Conduct of Elections - and Part VI - Court of Disputed Returns - are so extensive and detailed that it is difficult, if not impossible to avoid the conclusion that they were intended to lay down a "code" not only as to the circumstances in which elections to the Parliament are to be conducted, but also as to the circumstances in which, and the manner in which, questions arising in the court of, or relating to any stage of the whole electoral process may be entertained and adjudicated upon' (per Powell J. at p.274)."

[27] It cannot be said that the provisions of the Fiji Constitution and the Electoral Act 1998 are "extensive and detailed" concerning the conduct of election petitions. This very summons illustrates that fact. However, in my judgment, to the extent that provision is prescribed in the Constitution and the Electoral Act they do set out a code which must be followed. I respectfully adopt the dicta and reasoning of Scott J and Shameem J.

[28] The Constitution and the Act do not in themselves define what is meant by the words "brought" and "presented" and "filing". Although outside authorities are helpful, I must necessarily ascertain the meanings of these words within the wording and intentions of the Constitution and the Act.

- [29] Counsel for the second respondent helpfully produced a number of authorities defining the meaning of the word "brought" as ranging from the lodging of documents with the courts [see: *John Cauchi v. Air Fiji Limited and Air Pacific Limited* (Civil Action No. 0331 of 2001)] to lodging, issuing and serving of documents, (*Clouston v. Motor Sales (Dunedin)* [1973] 1N.Z.L.R. 542atp.543asperQuilliam J.)- in the English Court of Appeal in *Milor SRL and Others v. British Airways* [1996] 3 ALL E.R. 537, Phillips L.J. at p.540 stated that "the natural meaning of 'brought' will, however, depend upon its context".
- [30] The word "brought" must be interpreted according to the fact it is in the Constitution and the use of that word in that context.
- [31] By section 141 of the Electoral Act, the Interpretation Section for Part 7, "petition means a petition referred to in section 73 of the Constitution".
- [32] The Electoral Act does not use the word "brought". Section 142(1) states that "a petition must be presented by filing ..." The word "presented" does not stand on its own. Were that so I would have to scrutinise the authorities on the meaning of the word "present", and examine the consideration that "presenting" is an act of a party whereas "filing" is the act of a court official. The word "presented" is bolted together with the words "by filing".
- [33] Does that subsection set out one way in which a petition may be "brought" or was the legislature setting out, as part of its provisions for election petitions, a statement of what is required for a petition to be "brought", namely its presentation by filing ?

- [34] If the former interpretation is adopted this would mean election petitions could be brought which were outside the regime prescribed by the Electoral Act. In my judgment, given the need for certainty, the breadth of meanings which can be attached to the word "brought" and the fact that it is accepted that the Electoral Act sets out to provide a code for the bringing and handling of election petitions then the latter approach must be the correct one. This is consistent with a purposive, principled and practical interpretation of the use of that word in the Constitution.
- [35] Therefore, for a petition to be "brought" under section 73 of the Constitution it must be "presented by filing it in any registry of the High Court".
- [36] This necessarily raises the question as to what is meant by "filing". There is also the attached question as to what extent a petitioner has to ensure that all the requirements of filing have been complied with or show that he or she has done all he or she can to comply and any shortcomings are those of the court registry.
- [37] It is important to note at the outset that section 142(1) reads 'a petition must be presented by filing' and does not read 'a petition must be presented for filing ...'
- [38] What is meant by "filing"? There must be more than the bringing to the High Court Registry of the required documents and sums of money. Were that not so, section 142(1) would have read "presented for filing" or just "presented" within the prescribed time.
- [39] There are authorities that state that "filing" means "supplied to the registrar for registration", (see : the dictum of Couzens-Hardy M.R. at p.157 in re : Yolland, Husson and Birkett Ltd., Lester v. Yolland, Husson and Birkett Ltd. [1908] 1 Ch. 152). This case concerned section 14 of the

Companies Act 1900. In *Hunter v. Caldwell* [1847] 10 Q.B. 60 the Court stated:

"The word 'filing', in reference to matters of practice is very commonly used to express the duty of bringing to the proper office, as the case may be, writs, pleadings, affidavits and other such matters for safe custody, or enrolment".

[40] In Butterworth's "Words and Phrases Legally defined", Volume 2 at p.240 in relation to the use of the word in New Zealand it states:

"What is the meaning of the word "filed"? Filing, it has been said, is the means adopted of keeping court documents ... In its primitive ... meaning "filing" means putting the documents on a file; but now documents are kept together by other methods. "Filing" now really means depositing in a court office. It has, in my opinion, acquired the secondary meaning; and in Whartons Law Lexicon it is said that "to file" means to deposit at an office." This is the dictum of Stout C.J. at p.588 in re: Commercial Union Assurance Co. Ltd. [1899]18N.Z.L.R. 585.

[41] In Butterworth's Concise Australian Legal Dictionary the words 'Filing of Documents' are defined as:

"The act of lodging documents with a court and having them accepted by the court. Filing of documents involves the registrar of the court signing the documents and sealing them with a seal of the court and endorsing the serial number of the proceedings on the documents filed."

[42] In *Sagahir v. Najib* [2005] E.W.HC. 417 Q.B. the court considered Rule 4(2) of the English Election Petition Rules 1960, namely;

"(2) The petition shall be presented by filing it and at the same time leaving three copies at the election petitions office."

[43] The Court had to decide which of two versions of the petition had been filed. At paragraph 40 the Court (Richards J. and Tugendhat J.) stated:

"Only version one can be said to have been filed and only in relation to version one can it be said that any copy (there are not three, as strictly required), was left at the election petitions office. Version one was the only document that was both stamped with payment of the fee and sealed with the court stamp."

[44] Within the context of the Electoral Act and in particular section 142(1) "filing" means more than the act of presenting the documents and required sums of money at the registry. The use of the words "presented by filing" and not just "presented" requires this. In proceedings which are as important and sensitive as election petitions, if, from the competing interpretations of a word or phrase, there is one which provides a greater clarity of events or better fixing of when those events occurred then that is the interpretation which should be preferred. Argument will arise unnecessarily if there is scope for a petition to be "brought" over a number of days, for example by bringing in required documents or monies on different days, or on a day which is different from that appearing on the face of receipts or stamped on the petition.

[45] Time limits are strict and the court has no discretion to alter them. The affixing of the court stamp with the name of the registry, the word "filed" and the date to documents gives certainty.

[46] What must be done before a petition can be described as "filed" or "presented by filing" and the stamp bearing the word 'filed' and a date affixed by the court registry ?

[47] It is clearly not for any person in the registry to decide whether or not there is merit in a petition.

[48] CD. Singh in his affidavit filed on the 24th of October stated:

"5. THAT the general Procedure for lodgement of documents in the first instant that is commencement of any new actions, I approve on the same day or by the Officer authorised by me in my absence and not left for the next day. At times at the request of the counsel, I approve the urgent application at the time of lodgement.

6. THAT the documents are only issued and stamped once the fees, costs etc. are paid.

7. THAT the registry does not keep or retain any cheque or cash without receipt being issued."

[49] CD. Singh is Senior Court Officer in-charge of the Civil High Court Register in Suva. He stated in evidence that the procedure is the same at other High Court Registries. He stated that this has been the procedure for a long time and it is well known by all practising lawyers. He stated that the checking and authorising of an action does not go to the merits or issues of a case.

[50] CD. Singh's evidence is that the stamp bearing the date and the word "filed" is not affixed until a check has been made, the filing fees have been paid and any other originating requirements have been met, such

as the deposit of a security for costs. He stated the procedure is the same for the commencement of all actions.

[51] I accept that these are all reasonable and practicable requirements which must be met before a petition can be regarded as "presented by filing" or "brought". To hold otherwise would mean that a petitioner might not pay the fees yet still have his petition stamped as "filed", or not lodge the security for costs and still have the petition stamped as "filed"; the mandatory requirements of the Electoral Act could be circumvented. This interpretation is also consistent with the wording of s.142(2), which prescribes how a petition is to be served, thereby continuing the progress of a petition after the "filing" that is required by subsection one.

[52] What are the facts in this case?

[53] I consider first the evidence of Vijay Kiran Archari. I accept that he was truthful and doing his best to be reliable. He states that he arrived on the last day for filing, 27th June, at the High Court Registry at 2.40 p.m. The Registry closed its doors at 3.00 p.m. and allowed no new persons inside. He was served at around 3.10 p.m. and, according to his affidavit, "lodged the said documents, along with two cheques being for security for costs in the sum of \$500.00 and blank cheque being for filing fees as I was not aware for the exact amount for the filing of such a petition".

[54] In evidence-in-chief, however, he stated "I remember taking one cheque. It was, I think, for \$500.00. The cheque for \$500.00 was for the election - petition. Despite further examination-in-chief and in cross-examination he adhered to the fact that on the 27th of June he only brought in one cheque and as far as he could remember that was for \$500.00. That must have related to the security for costs. The filing fee for a petition is



\$100.00 plus value added tax. This therefore means that when the documents were brought in there was no provision for the filing fee.

- [55] In cross-examination Mr. Archari was asked how his affidavit came to be written down and he replied that "it was written by another clerk. I didn't dictate it.' Questions were asked of me. Probably what time. He asked questions and I answered and he wrote. I didn't read the affidavit carefully. I did read it, I just glanced at it".
- [56] He was further asked about the \$500.00 cheque. At paragraph 6 of the affidavit he had stated "the said documents and a cheque for \$500.00 was accepted as these were all requirements for the lodgment of the petition but the amount to be paid for filing of the petition was to be made to be known to me once the petition was approved". He was asked what actually happened to the \$500.00 cheque. It was put to him "you don't know if you gave it and or took it back and gave again?". He replied "I don't remember".
- [57] The evidence before the Court is consistent with the security for costs cheque being received by the registry either on the 27th or 28th June. Most importantly, there is not exhibited before me a copy of the receipt for the \$500.00 security for costs. Mr. Archari could not remember when the cheque for \$500.00 was accepted and receipted by the Registry. He did remember picking up the petition from his folder at the Registry on the 28th of June.
- [58] CD. Singh in evidence stated that the petition was approved as being in order on the 27th of June. There is a slip with a signature to this effect on the file and a note thereon concerning the requirement of \$500.00 as security.

- [59] Pranesh Sharma and CD. Singh stated in evidence that unreceipted cheques are not kept by the High Court whilst awaiting approval of documents. Pranesh Sharma continued that "I am aware that no documents are filed and issued until the fees are paid and payment date will be the date of issue at the backing of the document". He said the issuing date on the back would depend on the day of payment. He continued "at the time of filing any new action, the registry never advises to come next day as Senior Court Officer attends promptly and before the counter service is cleared for the day". I accept the evidence of CD. Singh and Pranesh Sharma.
- [60] Neelupha Khan is a law clerk for the petitioner's lawyers. In her affidavit filed on the 17th of October she stated she had been doing daily filing and service of documents for the preceding three and a half months. She stated "I have come to learn that there are certain procedures we have to follow when filing documents, which is, we have to get the legal documents approved first by the Senior Court Officer, Deputy Registrar or a Judge and it is stamped and issued at a later date upon approval from the Senior Court Officer, the Deputy Registrar or a Judge". She cited three cases in which documents had been lodged and kept by the court with issuing dates one or more days later. It is to be noted that two of these three did not relate to the issuing of proceedings but the lodging of interlocutory documents. The one that did relate to the originating documents was stamped as issued the day after lodgment. No further details were given of that particular proceeding. She did not give oral evidence.
- [61] It is clear that when documents are stamped as filed there is a difference in practice between documents which originate a process and interlocutory ones. For a variety of reasons the latter might not be dealt with immediately.

- [62] It is to be noted in passing that the respondents took no point on the question whether the tendering of a cheque was sufficient for compliance with the Electoral Act and the Constitution or whether cash was required or sufficient days before the deadline for clearance of cheques. I make no findings on this point.
- [63] The petition was approved on 27th of June by CD. Singh, the Senior Court Officer. On balance I find the cheque for security for costs was retained by Vijay Archari. It was brought back to the Registry the next day with a cheque for the filing fees. The filing fees were receipted on the 28th of June. There is no direct evidence as to whether the security for costs was paid and if so when. The inference on the balance of probabilities is that this took place on 28th June as the petition would not have been stamped without such a security. This is particularly backed up by the note of CD. Singh concerning the deposit on the slip where he signified his approval of the petition.
- [64] There is no evidence that the petitioner or his legal representatives did everything they reasonably could to ensure that all the formalities for filing were completed on the 27th of June. Indeed, they were not in a position to pay the filing fees on the 27th of June and I have found the security was lodged on 28th June.
- [65] On the face of the evidence before me I find that the last date for bringing of the petition in this case was 27th of June. The petitioner, by his lawyer's clerk, on that day gave to the High Court Registry in Suva the petition and a cheque for the security for costs. There is insufficient evidence to show that on that day any provision was made for the filing fees. There is no evidence that the security for costs was paid before the deadline.

- [66] Accordingly I must find that the petition was not "brought", that is not "presented by filing", within six weeks of the declaration of the poll. To have "brought" the petition in time it had to be approved and the security for costs and filing fees be paid and receipted and the petition stamped filed on or before 27th of June. This clearly did not happen and I must therefore strike out this petition with costs.
- [67] It is perhaps trite but it needs to be said that if there are deadlines which are strict, particularly if a whole action might fail, then it is unwise to wait until the last moment before attempting to comply with them.
- [68] Although I have dismissed this petition on the grounds set out above there are three issues which require addressing. No counsel in this case sought to argue that the court could not go behind the date stamped as "filed" on the petition. No counsel sought to argue that the court could not hear evidence to show when the petition was in fact "brought". Counsel for the respondents put forward the proposition that there necessarily is an onus upon a petitioner to do all that he or she can to ensure that the various rules and requirements are complied with. I consider these three issues.
- [69] In my judgment, the correct approach is this. The date stamped on the petition as the date "filed" is to be regarded as the date upon which the petition was "brought" and "presented for filing". If this is not accepted by a petitioner or a respondent then the onus is on that party to prove that the petition was "brought" and "presented for filing" on some other date. The court will hear evidence on this issue. It is incumbent upon a petitioner to do all that he or she reasonably can to ensure that a petition is brought within the set time limit.

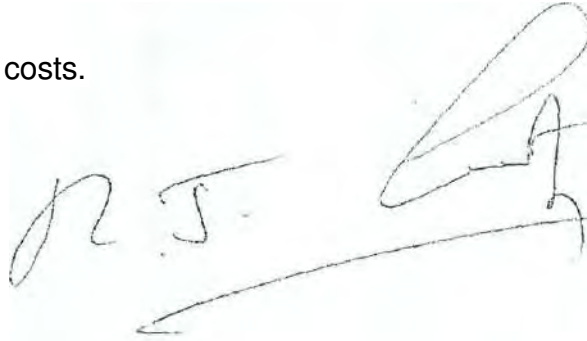
- [70] In seeking to show a petition was brought on a date other than that stamped on the petition a petitioner must show he or she did all he or she reasonably could to ensure it was brought within the set time limit.
- [71] Section 73 of the Constitution and sections 142, 144, 145 and 147 of Electoral Act 1998 consistently use the word "must" when setting out the time limit for the bringing of a petition, what must be done to bring it and the consequences if there is any failure. These sections and their surrounding provisions clearly place the onus upon the petitioner and do so in mandatory terms. This is in keeping with the whole nature of the regime for election petitions. Further, given the nature and importance of election petition procedures it is vital that there is certainty.
- [72] I do find that the date stamped on the petition as filed necessarily must be the starting point when there is any concern over whether a petition has been brought in time. I do not find that that stamp date is unassailable. The court registry does have a duty to ensure that if all necessary documents and monies are tendered on a particular day then there is a check and, if in order, approval of the petition, the receipting of monies and a stamping of the petition as filed on the same day.
- [73] There is always the possibility that a petitioner has done all that he or she reasonably can to file a petition by a certain date yet the petition is stamped as filed on a later date, or even an earlier date, as a result of inadvertence, dilatoriness or dishonesty. It would be wrong to preclude a petitioner or a respondent from challenging the stamped date. However, that stamped date must stand until some other date is proved.

[74] For the benefit of future election petitioners I would summarise my findings as follows:

1. For an election petition to be "brought" within the meaning of section 73(3) b of the Constitution it must be "presented by filing" it in any registry of the High Court.
2. A petition will not be considered as "brought" until it is "filed".
3. All the requirements of filing must be completed before the expiry of the time limit.
4. Before a petition can be regarded as "filed" it must be :
  - (a) Approved (as to formalities, not merits) by the Senior Court Officer or his nominated representative,
  - (b) Have the filing fee paid and receipted,
  - (c) Have the security for costs paid and receipted and
  - (d) The petition be stamped with the date filed.
5. The onus is upon the petitioner *to* do all that he or she reasonably can to ensure a petition is brought within time.
6. The date stamped as "filed" on the petition is the date on which the petition is to be regarded as "brought" unless it is proved to have been brought on some other date.

7. Any party may bring evidence to show that the petition was in fact brought on some other date. The onus is upon that other party to prove the petition was in fact brought on some other date. Evidence in response may be adduced.

[75] I will hear the parties on costs.

A handwritten signature in black ink, appearing to read 'R.J. Coventry', written over a light blue rectangular background.

**(R.J. Coventry)**  
**JUDGE**