

GORDON DARCY -v- JACKSON PIASI

High Court of Solomon Islands

(Muria CJ.)

Civil Case No. 262 of 1993

Hearing: 20 October 1993

Judgment: 26 October 1993

A. Radclyffe for Petitioner

F. Waleilia for the Respondent

**MURIA CJ:** The Petitioner was an unsuccessful candidate at the 26 May 1993 General Election for Gizo and Kolombangara Electoral Constituency. At that election the Petitioner polled 661 votes while the Respondent polled 384.

The Petitioner now petitions this court on a number of grounds, one of which is that the Respondent was disqualified from being a candidate because one of the persons nominating him namely, Naso Pazabeto, did not comply with section 25(1) of the National Parliament Election Provision Act 1980 in that his (Pazabeto's) "domicile of origin" is not in Gizo and Kolombangara Constituency or in the Western Province but in Choiseul Province. For the present proceedings only this ground is pursued by the petitioner at this stage. If this ground fails, the petitioner will then pursue the other grounds as set out in the petition. The court will therefore concern itself only with paragraph 3 of the petition.

Before arguments were put to the court, the petitioner called Mr. Andrew Dupu to give evidence on behalf of the Petitioner. Mr. Dupu testified that Nason Pazabeto was born at Soranamola village, North Choiseul, the same village where he was born. Mr. Dupu further stated that Pazabeto's father is also from Soranamola village.

According to Mr. Dupu, although Pazabeto was born in Soranamola village, Pazabeto left his village since about 1969 and has since been living in Gizo all his life since 1969. Mr. Dupu himself has not returned to his village for the last 10 years and has been in Honiara ever since. At the last election Mr. Dupu voted in the East Honiara Constituency.

Mr. Ashley who represent the Attorney General, called the Returning Officer, Mr. Ivan Maeke, who testified that he accepted Nason Pazabeto as one of the nominators because, although Mr. Pazabeto was born in Choiseul, he has been living permanently as a

resident of Gizo. The Returning Officer stated that Pazabeto was therefore entitled to nominate the Respondent.

Mr. Radclyffe's argument hinges around the meaning of the expression "domicile of origin" as used in section 25(1) of the Act. It was argued by Counsel that at the time of nomination, Mr. Pazabeto was not qualified to nominate the Respondent because his (Pazabeto's) "domicile of origin" was not in Gizo and Kolombangara Constituency or Western Province.

For the present purpose, I set out section 25 of the Act. It provides as follows:

*"25(1) Any person submitting himself for election, hereinafter referred to as a candidate, shall be nominated in writing by three electors ordinarily resident in the constituency for which he is a candidate and the persons making the nomination, other than in relation to an election for a constituency which is in or partly in the town of Honiara, shall be persons whose domicile of origin is in that constituency or in the Province in which the constituency is situated, and no candidate may be nominated for more than one electoral constituency."*

The two qualifications of a nominator, Counsel says, are that he must be "ordinarily resident" in the Constituency and secondly, his "domicile of origin" must be in that constituency or in the Province in which the constituency is situated. These requirements, says Counsel, are mandatory. Thus Counsel submitted, if the nominator was not qualified under section 25(1) of the Act to nominate the Respondent at the time of nomination, then he cannot be said to have validly nominated the Respondent. As such the Respondent was not qualified to be a candidate at the time.

Mr. Waleilia, on the other hand, strongly argued that Mr. Pazabeto was qualified to nominate the Respondent at the time he nominated the Respondent. Counsel further submitted that the Returning Officer was correct in accepting the nomination of the Respondent by the three nominators (of which Mr. Pazabeto was one of them) as validly done.

The main thrust of the argument by Counsel for the Respondent is that the nominator, Mr. Pazabeto, was an elector ordinarily resident in the Gizo and Kolombangara Constituency at the time he nominated the Respondent. The question of "domicile of origin" of Mr. Pazabeto, argued Counsel had never affected Mr. Pazabeto's right to nominate the Respondent. The question of "domicile of origin" of an elector is inapplicable in Solomon Islands when one considers it being applied to residents in villages or Provinces.

Mr. Waleilia submitted that one does not talk of 'domicile' in the villages or Provinces but rather one speaks of domicile of a person in a country or a state. 'Domicile' connotes the concept of a common Government, a common legal system and an unity of law. In Solomon Islands, Counsel submitted, one can only acquire one domicile, that is, domicile in Solomon Islands.

The other argument which Mr. Waleilia put forward is that even if Mr. Pazabeto has been held to be not qualified to nominate the Respondent, it did not necessarily disqualify the Respondent as a candidate. Counsel sought to support his argument by drawing a distinction between the qualification of a candidate and that of the nominator. He argued that throughout the Act references are made only on the qualification and disqualification of a candidate but not of the nominator. As such, Counsel argued, any disqualification of the nominator to nominate the Respondent bears little or no effect at all on the validity of the candidacy of the Respondent.

I think I can shortly dispose of that point. With respect to counsel, I must disagree with counsel because the validity of the candidacy of the Respondent throughout the election process must, among other things, also depend on his being validly put in as a candidate in the first place. A candidate who had not been properly nominated cannot be said to be eligible to stand as a candidate because he would not be qualified to do so. The same argument was put in the case of *R-v-Election Court, ex parte Sheppard [1975] 2 All.E.R 723* where the court held that if the nomination was defective, the election is defective. Lord Widgery CJ had this to say at page 727:

*"It is contended on behalf of the applicant that the mere fact that his nomination paper was rejected to the extent and manner to which I have referred did not prevent him from being duly elected. Accordingly he says that his seat should be preserved for him.*

*When that submission was made on his behalf a few minutes ago it was met by the counter from May J, if a candidate is not duly nominated, can he be duly elected? It seemed to me that counsel was unable to handle that observation because again, as it seems to me, it really gives the whole answer to this aspect of the problem.*

*In my judgment if the nomination is defective, the election is defective....."*

What would become of a candidate who is nominated to stand for election by three nominators one of whom is under the age of 18 years? Can it still be said that the candidate has been validly nominated as a candidate, ignoring the fact that one of the

nominators is a person not entitled to be an "elector?" Is not the case that only "electors" are allowed to nominate candidates for elections?

Clearly, a nomination of a candidate by a minor cannot be a valid nomination and a candidate who has been so nominated must be regarded as being not validly nominated.

Assuming the argument by Counsel for Petitioner is correct that Mr. Pazabeto was not qualified to nominate the Respondent for the reasons claimed by the Petitioner then it must follow that when he nominated the Respondent, that nomination cannot be valid and must necessarily follow that the election of the Respondent cannot be valid.

Thus the qualification of a nominator required in order to validly nominate a candidate is also an important factor in determining the validity of the candidate of a candidate who stands for election. *See R -v- An Election Court, ex parte Sheppard (supra)*.

Having said that I shall now turn to consider what I see as the main issue in this case. That issue is really whether the nomination of the Respondent as a candidate was valid or not. In order to determine that issue I shall now have to consider the claim raised by the Petitioner in this case that Mr. Pazabeto was not qualified to nominate the Respondent as a candidate at the last election.

As it will be observed, section 25 provides for the nomination of candidates. It must also be pointed out that the three nominators who nominated a candidate pursuant to that provision must all be "electors".

Becoming an "elector" in my view is crucial when a citizen considers participating in an election whether as a voter, a nominator or a candidate. For without being an "elector" a person is prohibited by law from participating in the election.

The word "elector" is defined in section 2 of the Act. It provides:

"*elector*" means any person entitled to vote at any election.

To be able to nominate a candidate under section 25(1) of the Act, the three nominators must all be "electors" who are "ordinarily resident" in the constituency for which the candidate is nominated. The section goes on to provide that the persons making the nominations must be persons whose "domicile of origin" is in that constituency or in the Province in which the constituency is situated. It is that second limb of the subsection that the Petitioner relies.

The Petitioner does not dispute that Mr. Pazabeto was and is ordinarily resident in the Gizo and Kolombangara Constituency. The Petitioner also never raised any challenge on the entitlement of Mr. Pazabeto to vote as an "elector" in the Gizo and Kolombangara Constituency. In fact Mr. Pazabeto has been a permanent resident of Gizo and had been registered as an elector in the Gizo/Kolombangara Constituency.

Mr. Radclyffe's argument is that even if Mr. Pazabeto was an elector and ordinarily resident in Gizo/Kolombangara Constituency he must also have his 'domicile of origin' in Gizo/Kolombangara Constituency or in the Western Province before he could validly nominate the Respondent. Mr. Radclyffe argued that Mr. Pazabeto's domicile of origin is in Soranamola, Choiseul Province and as such he was not eligible to nominate the Respondent. Choiseul is the domicile of origin of Mr. Pazabeto's father and that must also be Mr. Pazabeto's domicile of origin, says Counsel.

The question of 'domicile of origin' had been established and discussed in various cases. I do not need to go into the various principles governing this legal concept other than to say that at birth everyone has a domicile which is *domicile of origin*. There is also another kind of domicile which is a *domicile of choice* which can be acquired by a person by changing his domicile of origin. No person can have more than one domicile at once. See the cases cited in *Rayden on Divorce, Ninth Edition pages 33 and 34*.

The authorities cited at pages 33 and 34 of *Rayden on Divorce* clearly indicated that the question of domicile connotes the relationship between a person and a country or where there is a federal constitution, that relationship can also be between a person and a state, as in United State of America or Australia. There is also the notion that a person and his place of domicile must be subject to one system of law. see *Halsbury's Laws, 4th edn. para.421*.

In Solomon Islands there can only be, at the present, one domicile. That is, domicile in Solomon Islands. Domicile in Solomon Islands must be the legal relationship between an individual and the country both of whom are subject to one legal system. Belonging to a Province under the present legal system of the country does not create a separate domicile of a person inside Solomon Islands.

Although the words "domicile of origin" are used in the 1980 Act, when one looks at the previous legislations governing the election and in particular on the question of nomination of candidates, those words were never used. These legislations were enacted prior to Independence.

In the Electoral Provisions (Legislative Council) Regulations, 1964 it was there provided in regulation 25(1) as follows:

*"25(1) Every person submitting himself for election, hereinafter referred to as a candidate, shall be nominated in writing by three electors in the electoral district of which he is a candidate and no candidate may be nominated for more than one electoral district."*

The 1964 Regulations had been replaced by the Electoral Provisions (Legislative Council) Regulations, 1967. Regulation 25(1) of the 1967 Regulations is in exactly the same wording as that of its predecessor.

The Electoral Provisions (Governing Council) Regulations 1970 then replaced the 1967 Regulations. Again Regulation 25(1) of the 1970 Regulations is in exactly the same terms as its predecessor.

When we come to the Electoral Provisions (Legislative Assembly) Regulations 1976 which replaced the 1970 Regulations, one finds in regulation 25(1) the following provision:

*"25(1). Every person submitting himself for election, hereinafter referred to as a candidate, shall be nominated in writing by three electors eligible for registration and normally resident in the electoral district of which he is a candidate and no candidate may be nominated for more than one electoral district."*

The words added in the 1976 Regulations are "eligible for registration and normally resident."

Then we come to the 1980 Act, the National Parliament Electoral Provisions Act 1980, which replaced the 1976 Regulations.

In the 1980 Act, section 25(1) was expanded. The word 'resident' is qualified by the word 'ordinarily' instead of 'normally' as used in the 1976 Regulations. More significantly, the requirement of 'domicile of origin' has been included.

In my view Parliament had purposely used the term 'domicile of origin' and for a very valid reason. That reason can be ascertained when one compares the pre-independence legislation with that of the 1980 Act.

Before Independence, Solomon Islands was a British Protectorate and the inhabitants of the Protectorate were called 'British Protected persons'. Under international law the inhabitants of the British Protectorate were regarded as British "nationals" although

they were really "British Protected Persons." The Protectorate was not a foreign country but part of the British territory over which the British Crown assumed control.

It is therefore obvious that the "domicile of origin" of the electors before independence could not be legally said to be that of Solomon Islands. Hence all that was required of the electors before they could nominate candidates then were to be registered as electors in particular electoral districts together with the residential requirement.

When Parliament therefore used the words "domicile of origin" in the 1980 Act it must be understood in the context of a "domicile of origin" in Solomon Islands, as a country. For that is the status of this country on Independence. It achieved a legally recognised status with a distinctive legal system. All persons in Solomon Islands are subject to that one legal system and there is no other separate and distinctive legal system in this country.

Mr. Waleilia submitted that the words "domicile of origin" in the subsection is confusing. I do not think so. It may only be confusing if it is taken to mean domicile of origin derived in a particular constituency or Province, a meaning that obviously cannot be legally correct in Solomon Islands circumstances at the present. But if the words are understood in their proper sense as a legal conception, the words are perfectly clear and intelligible. They refer to a domicile of origin and one domicile of origin only, that is, domicile of origin in Solomon Islands.

If one then looks at the provision again, the mandatory requirement that the three electors must fulfil is that they must be ordinarily resident, of course in addition to being properly registered as electors, in the constituency for which they are nominating their candidate. The words used are "*.....shall be nominated.....by three electors ordinarily resident in the constituency....*"

Those words impose an obligation on the electors to have that residential requirement before they can nominate a candidate. The second part of the subsection however uses words which are very much of a passive description of the persons making the nomination. "*.... shall be persons whose domicile of origin....*" They described the persons making the nomination as persons whose domicile of origin is in the constituency or in the Province in which that constituency is situated. The domicile of origin is of course that of Solomon Islands but it links the electors to the constituency or the Province in which the constituency is situated.

Deciding as I do, that as the 'domicile of origin' in section 25(1) of the Act means domicile of origin in Solomon Islands, there can be no other domicile of origin derived from a constituency or Province in Solomon Islands. That domicile is however not

crucial to the validity of the nomination. The crucial requirement is that the electors must be ordinarily resident in the constituency in addition, of course, to their being registered as electors.

If Mr. Radclyffe's argument on the question of "domicile or origin" is accepted, it would mean that although Mr. Pazabeto was registered as an elector and entitled to vote in the Gizo/Kolombangara Constituency, he would not be allowed to make his choice of candidate because his domicile of origin was Choiseul. So either, Mr. Pazabeto would have to force himself to vote, if he decided to do so, for a candidate whom he did not support or not vote at all. I do not think Parliament intended such a result when it enacted section 25(1) of the Act.

Section 25(1) must be construed so as to conform with the spirit of the provisions of the Constitution dealing with an elector's right to participate in an election, in particular sections 55 and 56 which right must necessarily associate with the right to choose one's candidate.

Other arguments had been raised by Counsel in this case. However for the purpose of these proceedings which turns solely on the question of domicile of origin of the elector and nominator, Mr. Pazabeto, I do not think it is necessary for me to deal with those arguments at this stage.

In my judgement Mr. Nason Pazabeto as a registered elector whose domicile of origin is that of Solomon Islands and who was ordinarily resident in the Gizo/Kolombangara Constituency was perfectly entitled to nominate the Respondent. That nomination was effective and the Respondent was not disqualified from being a candidate.

I must therefore dismiss ground 3 of the petition against the Respondent. The question of the validity of the election of the Respondent as MP for Gizo/Kolombangara Constituency will have to be determined at the conclusion of the hearing of the rest of the grounds in the petition.

(G.J.B. Muria)  
CHIEF JUSTICE