

JOHN MAETIA -v- CHARLES DAUSABEA

High Court of Solomon Islands

(Muria CJ.)

Civil Case No. 266 of 1993

Hearing: 22 October 1993

Judgment: 23 November 1993

A. Radclyffe for the Petitioner

P. Tegavota for the Respondent

MURIA CJ: The Petitioner John Maetia Kaliuae brought this petition challenging the election of the Respondent Charles Dausabea a Member of Parliament for the East Honiara Constituency.

At the general election on 26 May 1993, the Respondent received 1537 votes and the Petitioner received 1316 votes, taking the second place in a poll of seven candidates. The Petitioner alleges a number of grounds against the Respondent. However, at the hearing, the Petitioner relied mainly on the following grounds:

Aug. 22,

3. (i) *The Ilia Polling Station remained open until approximately 7 pm on election day contrary to section 36 of the National Parliament Electoral Provisions Act 1980 (hereinafter called "The Act").*

(ii) *The Respondent polled 562 votes at the said Ilia Polling Station and your Petitioner 243 votes and as a result of the breach of the Act referred to above the result of the election was affected.*

.....

4. *The Respondent and/or his agents aided and abetted personation by distributing to people slips of paper copied from the electoral roll containing the registered numbers and names of people registered to vote.*

.....

6. *The Respondent and his agents arranged transport from CDC and other places outside the East Honiara Constituency for people not resident in the said Constituency to vote therein.*

7. *The Respondent in his capacity as Minister of Home Affairs misused his position to extend the period of voter registration for the East Honiara Constituency contrary to the provisions of the Act and appointed his own supporters to register and revise the voters list.*

8. *The Respondent was guilty of bribery contrary to section 70 of the Act in that before the election he:-*
 - (i) *Paid the airfare to Atoifi for the wife of William Bakale on condition that William Bakale voted for the Respondent. The wife left Honiara for Atoifi on 31st May 1993 using a ticket in the name E. Dausabea. The said william Bakale did vote.*

.....

10. (a) *The Respondent and/or his agent arranged for the registration as voters in the East Honiara Constituency for James Rutana and his wife. Neither James Rutana nor his wife are Solomon Islands citizens and are therefore disqualified from voting. They did vote at the Multipurpose Hall polling station. James Rutana is an employee or a business associate of the Respondent's.*

- (b) *The Respondent and/or his agent Robert Lula arranged for the registration in the said Constituency of Robert Lula's son Samuel Lula a Solomon Islands citizen and his wife Chusla a New Zealand citizen. Neither were present in Solomon Islands during the registration period and on 26th May 1993 but the voters list shows that someone must have voted using their names at Ilia polling station."*

The Petition called a number of witnesses to substantiate the grounds set out above. The other grounds stated in the petition were not pursued and no evidence was called in respect of those grounds.

The Respondent denied the allegations brought against him and also called a number of witnesses in support.

Before I deal with those grounds let me first of all deal with the question of standard of proof in an election petition where corrupt practices have been alleged against a candidate.

There can be no doubt that allegations of corrupt practices are very serious because if proved, they carry penal consequences under section 71 of the Act. The law therefore

requires that such allegations be sufficiently proved. The sufficiency of proof required of a particular allegation of corrupt practice, however, must depend on the nature of the allegation itself. For example, bribery, treating and undue influence are all instances of corrupt practices. However, to establish bribery there must be evidence showing a corrupt arrangement, whereas in treating there must be evidence to show that a candidate sought out his votes by a display of generosity with the intention of influencing the voting. Both are, nevertheless, in my view practices which are intended to corrupt the voters.

It has been suggested that in such cases, the standard of proof must be that applied in civil cases and that is on the balance of probabilities. In this jurisdiction, a number of cases had come before the court and in which the court had discussed the issue of the standard of proof in election cases. See *Tegavota -v- Bennett* [1983] SILR 34, *Alisae -v- Salaka* [1985/86] SILR 31, *Haomae -v- Bartlett* [1988/89] SILR 35, and *Mamata and Another -v- Maetia* CC.115 of 1984 (HC).

The cases of *Alisae -v- Salaka* and that of *Mamata & Another -v- Maetia* have taken a more stricter approach when it comes to proving corrupt practices in election petitions. Those cases established that where corrupt practices are alleged the evidence establishing such allegation must be to the entire satisfaction of the court. Those cases drew a distinction between the standard of proof required in election petitions claiming residential disqualification and that of corrupt and illegal practices.

The other line of cases are *Tegavota -v- Bennett* and *Haomae -v- Bartlett*. Those cases have taken the approach that election cases are civil cases and the standard of proof is that of proof on the balance of probabilities. Although in *Haomae -v- Bartlett* Ward CJ added that in deciding the degree of probability, the court must bear in mind the seriousness of the allegation (in that case the allegation was bribery).

In the present case, Mr. Radclyffe suggested that the test to be followed is that stated in *Haomae -v- Bartlett*. Mr. Tegavota did not seek to argue otherwise.

When one considers what should be the necessary degree of proof in election cases in Solomon Islands, that degree of proof does not fall neatly in either camp, that is, on the balance of probabilities or the criminal standard of beyond reasonable doubt. One must look further into what is required to be shown before an allegation such as treating can be properly said to amount to treating under the Act. One only need to look at section 71(2) of the Act to appreciate this.

Under section 71(2) of the act, the law clearly intended to preserve some of the custom of the people relating to making payments for feasts or entertainment which are done

in accordance with custom. Instances may arise when a person standing for election has to come to the aid of his relatives as a matter of customary obligation in purchasing a coffin for a death relative or the uncle of a candidate may be in need to urgently return home because of family reason and the candidate gives him money for his fares. Compensation is another area where custom requires a person to pay or help to pay. There may be a situation in which compensation has to be paid even during the election period and a person standing for election may be approached to help by his relatives. The candidate may well say, "*Alright, I will help you*" or he may say, "*I cannot help you now because this is election period.*" *I will help you after the election.*" Both of those statements are open to be construed as capable of having election overtones in them. Equally they are statements showing that in custom he would be obliged to help. Such instances cannot be neatly classified as falling under corrupt practices.

The other factor which goes to assist in determining the degree of proof of the allegations in an election petition is that of the consequences flowing from the breaches of the election laws. The consequences to a person found to have committed corrupt practices are very much of penal nature. Apart from being subjected to certain disqualifications, there is also the possibility of a prosecution being taken in consequence of the corrupt practices that have been found by the court at the election petition hearing. Whereas other breaches of the Act relating to residential qualifications, nomination or other voting procedures do not carry the same penal consequences.

From these observations, I am of the view that the test in *Alisae -v- Salaka* is the test to be followed in Solomon Islands when allegations of corrupt practices such as bribery, treating or undue influence are raised in an election petition. That required standard of proof is stricter in that the allegations must be proved to the entire satisfaction of the court. The evidence must be clear and unequivocal in order to enable the court to be entirely satisfied that the allegations of corrupt practices are made out and not simply on the mere balance of probabilities which is a test that is appropriate to the other allegations of breaches of the election laws.

I now turn to consider the grounds raised in this petition. There are a number of grounds raised in the petition but had not been pursued by the petitioner or had called no evidence to substantiate them. Those grounds are dismissed.

As to the grounds in respect of which evidence were adduced, I will deal with those in the reverse order.

Ground 10(a) and (b).

These grounds allege breaches of the Act relating to registration of voters and the voting itself.

It is alleged in paragraph 10(a) that James Rutana and his wife had been registered to vote and did vote. They were and still are citizens of Papua New Guinea. There is also the allegation that it was the Respondent and/or his agent who arranged for the two to be registered to vote. I have not heard any convincing evidence to show that the Respondent or his agent were the ones responsible for arranging for the two PNG citizens to vote. However the fact is that James Rutana and his wife Roana Rutana were registered to vote and voted at Multipurpose Hall on 26 May 1993. Their respective Registration Nos. were 8/9/67 and 8/9/68. James Rutana himself confirmed in evidence that he and his wife were registered to vote and did vote at the Multipurpose Hall on 26 May 1993.

There can be no justification in law for the Rutanas to be registered to vote and to vote during the election in Solomon Islands. Section 55(1) of the Constitution only allows citizens of Solomon Islands who are 18 years of age and above to be registered as electors. Section 56(1) of the Constitution then allows only those who are registered as electors to vote at elections. The terms of those provisions are as follows:

"55. (1) *Subject to the provisions of this section, a person shall be entitled to registered as an elector if, and shall not be so entitled unless -*

(a) *he is a citizen of Solomon Islands; and*

(b) *he has attained the age of eighteen years.*

.....

56. (1) *Any person who is registered as an elector in any constituency shall be entitled to vote in such manner as may be prescribed at any election for that constituency unless -*

(a) *on the date appointed for polling he is under such sentence of death or serving such sentence of imprisonment as is referred to in paragraph (a) of section 55(3) of this Constitution or (except in so far as may be otherwise prescribed) he is for any other reason unable to attend in person at the place and time appointed for polling; or*

- (b) *he is prohibited from so voting by any law in force in Solomon Islands because he holds or is acting in any office the function of which involve any responsibility for, or in connection with, the conduct of that election or because he has been convicted of any offence connected with elections.*
- (2) *No person shall vote at any election for any constituency who is not registered as an elector in that constituency.*

Section 7 of the Act which provides for the right to vote at an election also refers to section 56 of the Constitution.

By virtue of those provisions, James Rutana and Roana Rutana were not entitled to be registered as electors and consequently, they had no right to vote at the last election. The Assistant Registration Officer who was responsible for registering the Rutanas clearly acted contrary to law when he registered them as electors. This is a flagrant breach of the Constitution as well as the Act.

Ground 10(a) has therefore been made out.

As to Ground 10(b), the evidence adduced by David Kovara, the Returning Officer was that Chuslar Lula and Samuel Lula had been registered respectively as Nos. 12/16/231 and 12/16/236 as electors for East Honiara Constituency, Ward 12 : Panatina, Area 16: Kobito 1. Mr kovara further stated that Samuel and Chusler Lula did not vote as their names had not been crossed out.

The evidence clearly shows that they did not vote on 26 May 1993. On the other hand they clearly were registered as electors for East Honiara Constituency.

While Samuel Lula might have been entitled to be registered as a voter as he is a citizen of Solomon Islands, Chuslar Lula was not entitled to be registered as an elector because she is a New Zealand citizen. Her registration as an elector was done contrary to the Constitution and the Act.

The evidence shows that it was Uriel Lula who was responsible for registering Chuslar Lula as an elector. I do not believe him when he said that after receiving the Form Bs from Samuel and Chuslar Lula he just put them away. As can be seen from the List of Voters mentioned, Samuel and Chuslar Lula had been registered to vote.

It is also clear from the evidence from Uriel Lula himself that he was a supporter of the Respondent and that he campaigned for the Respondent. Indeed in his own testimony, Uriel Lula stated that he also volunteered to be a Polling Agent for the Respondent.

The evidence has satisfied the court that Uriel Lula was not only an election official but also acting as an agent of the Respondent. In both capacities, Uriel Lula deliberately caused Chuslar Lula, a person who was not qualified to vote in an election in Solomon Islands, to be registered as an elector contrary to the Act and the Constitution.

I find Ground 10(b) also has been made out to the extent that he Uriel Lula had caused to register Chuslar Lula, a New Zealand Citizen, to be registered as an elector in the East Honiara Constituency in breach of the Act and Constitution.

Ground 8(i).

This ground alleges that the Respondent had been guilty of bribery in that he paid the airfare for the wife of one William Bakale to go to Atoifi in consideration for William Bakale's vote. Mr. Bakale did vote at the election.

The evidence in support of this allegation came from William Bakale who testified that the Respondent gave him the ticket to send his wife to Atoifi Hospital. It was stated by Bakale that the Respondent asked him not to go to Malaita yet until after the election. According to Bakale, the ticket was given so that he and his wife would vote for the Respondent.

The Respondent denied the allegation and also called a witness Mr. John Babalu to support his denial.

On the standard of proof I set out earlier, I found Mr. Bakale's evidence not convincing in this case. Although it was agreed by the Respondent that he gave the plane ticket to Bakale and that it was not used until 31 May 1993, there was no evidence to suggest that Bakale's wife could have taken an earlier flight than that of 31 May 1993.

The evidence also shows that Bakale had visited the Respondent's Office a number of times since February 1993. Those visits were regarding Bakale's application for funding assistance out of the Respondent's discretionary fund. In one of those visits in mid May 1993 the Respondent, Babalu and Bakale were all present in the Respondent's office. It was during that visit that the plane ticket was handed to Bakale for his wife. I do not accept Bakale's evidence that it was handed to him outside the office.

The evidence further did not point to a conclusion that the assistance to Bakale's wife was for a corrupt purpose of obtaining a favour from him but rather the ticket was given as a result of request for help from Bakale.

The point raised by Mr. Radclyffe regarding the purchase of the ticket by LPO does not advance further the Petitioner's allegation under this ground.

Weighing the evidence regarding ground 8(i), I find that I cannot be entirely satisfied that this ground has been made out and I reject it.

Ground 7.

This ground alleges that the Respondent misused his position as Minister for Home Affairs at the time to extend period of registration of voters and appointed his own supporters to register and revise voters list. Polycarp Kaelafa who was the Registration Officer gave evidence on this aspect of the case. His evidence shows that the extension of the periods of registration and revision of voters were granted by the Respondent upon applications made to him by the Registration Officer. The Revising Officer at the time was David Kovara whose appointment as Revising Officer was terminated by the Respondent upon recommendation by the Registration Officer (Polycarp Kaelafa) who then recommended John Babalu to be appointed in place of David Kovara. The Respondent then appointed John Babalu as Revising Officer.

The evidence does not support the contention that the appointment and termination of David Kovara were done by the Respondent because he was the Respondent's supporter nor does the evidence support the suggestion that John Babalu was appointed because he was the Respondent's supporter. The evidence suggests the contrary.

There is also no clear evidence to support the suggestion that the Respondent was the one who appointed his supporters as Registration and Revising Officers. Only Uriel Lula was clearly a supporter of the Respondent. The evidence however did not show that he was appointed by the Respondent because he was a supporter. In fact Lula volunteered to help as polling agent for the Respondent without being appointed.

On the evidence I am not satisfied that ground 7 has been made out and court therefore fails.

Ground 6

It is alleged under this ground that the Respondent and his agents arranged transport from CDC and other places outside Honiara for people to come and vote at East Honiara Constituency.

The evidence on this allegation came from Patterson Fusuota and John Gilbert. The evidence of Patterson Fusuota was that he worked for SIPL and lived at CDC. On 26

May 1993, he said a red bus came to CDC and picked him and some other people to go to Ilia School, East Honiara, to vote. He and his brother Selwyn were among those in that bus. He and the others who were picked up at CDC, were told by a person who came in the bus that they were to go to Ilia School and to vote for the Respondent. The bus did infact took them to Ilia School. He did infact vote for the Respondent.

John Gilbert also gave evidence that he was a Divisional Assistant which was a Managerial position with SIPL and lived at CDC. On 26 May 1993 he was at CDC when a red bus came to CDC and picked people to go to Honiara to vote for the Respondent. He was standing outside the bus and saw Patterson and Adeo together with Adeo's family boarded the bus to come to town to vote. He was there when a person spoke from inside the bus that the bus was sent to collect people to vote for the Respondent.

The Respondent denied any knowledge of arranging for a bus to bring people from outside Honiara to vote for him at Ilia Polling station. In support, the Respondent called Mr. Eddie Ngava the Managing Director of the Red Bus who stated that there was no record of any of his buses being hired by the Respondent.

It is not clear if the red bus mentioned by Patterson Fusuota and John Gilbert was one of the red buses belonging to Mr. Ngava's company and trading as "Red Buses" or simply a red bus (red in colour). Mr. Ngava's evidence was therefore of no help at all. But the undisputed evidence of Patterson Fusuota and John Gilbert was that a red bus turned up at CDC on 26 May 1993 and collected people to come to vote at Ilia school. One of such people who came by that bus to Ilia Polling Station and cast his vote for the Respondent at Ilia Polling Station was Patterson Fusuota himself.

Providing transport for voters has long been accepted as a normal practice at elections and usually would not be a ground for avoiding an election. However, it is completely a different matter altogether where transport has been provided for people who are not registered to vote in a constituency for the purpose of enabling them to cast their vote in that constituency in which they were not registered to vote. This was what happened here. A bus was made available for people like Patterson Fusuota and others from CDC who had no right to vote at Ilia Polling Station in East Honiara Constituency to come and vote at that polling station. This is clearly an illegal practice as prohibited by section 76 of the Act which provides as follows:

"76. *Any person who*

- (a) *votes, or induces, or procures any other person to vote, at any election, knowing that he or such other person is prohibited by any provision of this Act or of the Constitution or any other law*

for the time being in force in Solomon Islands from voting at such election; or

- (b) *before or during an election knowingly publishes any false statement of the withdrawal of a candidate at such election for the purpose of promoting the election of another candidate, shall be guilty of an illegal practice and shall be liable to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment, and shall be disqualified during the period of three years from the date of his conviction, from voting at any election."*

The evidence here is that the red bus which turned up at CDC on that election day to collect people to go to Ilia Polling Station to vote. It was not a bus that was doing its normal passenger run but a bus sent specifically to collect people who were not registered to vote at the East Honiara constituency but were nevertheless brought to cast their votes illegally at Ilia Polling Station. But the question is who arranged that transportation? The evidence does not point conclusively to the Respondent or his agent as alleged in this ground.

I find there was illegal practice here committed by Mr. Fusuota and others but the Petitioner must prove that it was through the act of the Respondent or his agents. I am not satisfied that this ground had been made out to the entire satisfaction of the Court.

Ground 4

This ground alleges the corrupt practice of personation on the part of the Respondent and or his agents in aiding and abetting voters to vote in the name of other people.

Personation is a corrupt practice and it is complete as soon as the impersonator applies for a ballot paper with a corrupt intention. In *Alisae -v- Salaka* the court stated that "corrupt" means doing the thing which the legislature forbids. That definition is also applicable here.

Turning to the evidence, it is clear that Patterson Fusuota had committed the act of personation here. Having arrived from CDC, he was given a small piece of paper with only a number (Registered Voter's Number). There was no name on that piece of paper. He proceeded to the voting booth where upon presenting the piece of paper with a voter's number, he was given a ballot paper which he marked and placed in the Respondent's ballot box.

Patterson Fusuota further testified that it was the Respondent's brother, Ramo Dausabea who gave him the piece of paper containing a voter's number on it. He further stated that the Respondent's brother forced him to vote for the Respondent. Although the evidence of force being used on Patterson Fusuota is not that convincing, what is clear, and the court is convinced of, is that someone gave the piece of paper to Patterson Fusuota to use to obtain a ballot paper. Patterson Fusuota admitted he knew it was wrong but he still proceeded to vote under somebody else's registered number.

In **Dio -v- Saemala CC77/89**, the question of the use of pieces of papers as a means by identifying an elector at the time of voting had been raised. The learned Chief Justice Ward felt that he saw "no practical difference between a voter giving his name to the polling assistant orally or by writing on piece of paper." With respect, I feel that what the learned CJ said in that case must be viewed in the light of the circumstances of that case only. It cannot and would not be appropriate to apply that to all cases of election petitions where the use of such pieces of papers have been challenged. One can only discover from the evidence in this case the practical difference that can arise with the use of a piece of paper as a means of identification of a voter. In the present case Patterson Fusuota identified himself with the use of a piece of paper. He was not a registered voter and should not have voted, yet, through the use of a piece of paper, he was able to pass through the polling assistant and was allowed to cast his vote.

The case of **Dio -v- Saemala** does not in any way encourage the use of pieces of papers as a means by which a voter can identify himself and it would be wrong to assume that **CC77/89** does that. Any candidate who encourages the use of such pieces of papers during polling runs the risk of being subjected to allegations of illegal or corrupt practices.

In this case not only did Patterson Fusuota committed an act of illegal practice by voting knowing that he was not entitled in law to vote but he also committed an act of corrupt practice by voting using somebody else's registration number and name. He was assisted in the commission of this corrupt practice by those who were distributing the pieces of papers at that Polling Station.

On the evidence the court is satisfied that the impersonator Pattersen Fusuota, in this case have committed this act of corruption. But the question is, who aided and abetted the personation? That question must be answered on the evidence before the Court.

Henry Ata and Jeriel Ausuta gave evidence of their experiences that day, 26 May 1993 when they came to Ilia Polling Station to vote.

Jeriel Ausuta was given a small piece of paper by somebody who was not an election official. There was woman in front of Jeriel Ausuta at the queue and she also was holding a piece of paper with a number on it. When the woman presented the piece of paper it was discovered that the number on that piece of paper was Mr. Ausuta's registered number. Fortunately for Mr. Ausuta he was there when that was discovered. He then cast his vote himself.

Henry Ata came to vote that day, as well sometime after 3.30 pm. To his dismay, he discovered that his name had already been crossed out as having already voted. Somebody had voted using his number and name.

Both Ausuta and Ata could not say who those people who were distributing pieces of papers. Only Fusuota said that one of them was the Respondent's brother. I bear in mind that Fusuota was a person clearly willing to commit an act of corruption to benefit the Respondent and now come to this court to testify against the Respondent. I am afraid I have to weigh his evidence with caution. Having done so, I find that I cannot safely rely on his evidence that it was the Respondent's brother who gave him the piece of paper containing a voter's registered number.

Those incidents were illegal practices, if not, corrupt practices occurring at Ilia Polling Station during the election on 26 May 1993. What is the effect of the situation where corruption is proved. The answer has been clearly stated in section 65(1) & (2) the Act which provides:

" 65. (1) *No election shall be valid if any corrupt or illegal practice is committed in connection therewith by the candidate elected or his agent.*

(2) *Where on an election petition it is shown that corrupt or illegal practices or illegal payments, employments or hirings committed in reference to the election for the purpose of promoting or procuring the election of any person thereat have so extensively prevailed that they may be reasonably supposed to have affected the result, his election if he has been elected, shall be void and he shall be disqualified for election as a member of the National Parliament for a period commencing on the date of judgement by the Court to the date of dissolution of the National Parliament following that judgement."*

Subsection (1) covers corrupt or illegal practices committed by the candidate or his agent, and subsection (2) covers general corrupt or illegal practices which are "so extensively" prevailing at an election. Subsection (2) makes it clear that where corrupt or illegal practices have so extensively prevailed the court must declare the election

void and the candidate is incapable of being elected to fill that vacant seat for the period specified. However that can only happen if there was general corruption or illegal practices "so extensively prevailing" at the election. That was not so here.

On the evidence, I have some reservation whether it was the Respondent or his agents who aided and abetted the personation through the use of slips of papers. This ground must therefore fail.

Ground 3(i) & (ii)

The facts on these grounds are not in dispute. It is conceded by the Respondent that Ilia Polling Station remained opened until about 7.00 pm on 26 May 1993. There is no dispute that by 5.00 pm there were still a lot of people who had not yet voted at the Ilia Polling Station. David Kovara put the number about 100 people. Henry Ata put it as "a crowd of people queuing up to vote", at the Polling Station.

David Kovara stated that just before 5.00 pm on 26 May 1993, the police who were helping out at the Ilia Polling station contacted him about the people that were still waiting to vote. Mr. Kovara went to the Polling station and advised the police and other election officials to keep the Ilia polling station opened until 7.00pm so that those who arrived before 5.00 pm and had not yet voted could remain there and be allowed to vote and those who arrived after 5.00 pm be excluded from voting. That was done and as a result the voting continued until 7.00 pm on 26 May 1993 at Ilia Polling Station. Mr. Kovara said he based his direction on the instructions issued by the Electoral Commission.

The court has not seen that set of instructions. But whatever those instructions are, they cannot supersede the clear provisions of section 36 of the Act. That section provides:

- "36. (1) *The Commission may, by notice specify the hours of voting generally or in relation to any electoral constituency:*
- (2) *Except where the Commission otherwise specifies under this Act, the hours of voting shall, be from seven o'clock in the forenoon until five o'clock in the afternoon."*

The hours of voting shall be from 7.00 a.m to 5.00 p.m except where the Commission otherwise specifies. Although there is power in the Commission to specify some other voting hours that has to be done by notice. Moreso, the Commission is not to exercise that power (power to specify the hours of voting) in relation to any electoral

constituency "at anytime between the dates appointed in relation to that electoral constituency for the delivery of nomination papers and for holding the election."

It is therefore highly unlikely that the Commission would have issued such instructions as relied on by Mr. Kovara in directing the hours to be extended to 7.00 p.m. There is simply no power in the Returning Officer to extend the hours of voting as fixed by law.

What is the position in law of the votes received after 5.00 pm in this case? These are the votes of the many people who arrived at the polling station before 5.00 pm but have not voted yet and who were allowed to vote and did vote between 5.00 pm and 7.00 pm. When one looks at the language of section 36(2) there can be no scope of construing the words "hours of voting" in that section to cover the extra two hours, as done in this case, particularly so when the "hours of voting" had been fixed mandatorily to be from 7.00 am to 5.00 pm. That was the time within which ballot papers were to be issued to voters and the votes to be received. Ballot papers issued after the close of the poll at 5.00 pm would result in voters casting their votes outside the hours of voting. Such cannot be the intention of section 36(2) of the Act which must be construed strictly.

In an Irish case of *Gribbin -v- Kirker* (1873) IR 7 CL30 votes were received after the close of the poll. The election was declared void because of the reception of votes after the hours of voting. See also the *Ipswich Case* (1835) K & O 332, 380, 382 where votes received after the close of the poll resulted in the election being held void.

In the judgement of this court, section 36(2) of the Act does not allow ballot papers to be issued to voters after the hour fixed for the closure of the poll. Votes received from voters who have been issued with ballot papers after the close of the poll are void.

On 26 May 1993, the casting of votes at Ilia Polling Station came to a close at 5.00 pm and no votes should have ever been received thereafter.

It is not clear how many votes were received Ilia Polling Station after 5.00 pm on 26 May 1993 as well as in whose favour those votes were cast. But the evidence shows that a substantial number of people voted between 5 pm and 7 pm. In the court's view this election irregularity committed in breach of the Act was 'a material non-compliance with the election laws and fatal to the result of the election.

Ground 3(i) & (ii) of the petition has clearly been made out.

Having found the various breaches of the election laws in this case, the court will consider whether the election of the Respondent should or should not be declared void. I bear in mind section 9 of the Act which provides.-

"9. *No election shall be invalid by reason of non-compliance with this Act if it appears that the election was conducted in accordance with the principles of this Act and that the non-compliance did not affect the result of the election.*"

Thus if the court is satisfied that the election was notwithstanding those breaches of the law, an election really and in substance conducted under the principles of the election law and that the result of the election, that is, the success of the Respondent candidate over the Petitioner was not and could not have been affected by those breaches, then the election ought not to be declared invalid. On the other hand if the non-compliance of the election law was such that the election was not really conducted under the principles of the law on election and the non-compliance of the law affected the result of the election, the court must declare the election invalid.

In this petition I have found the grounds 3(i) & (ii), 10(a) & (b) proved.

As I have said the action of the election officials in allowing the poll to remain open beyond the closing time which resulted in a relatively large number of people being allowed to vote outside the closing time was not in accordance with principles of the Act. The non-compliance here, also in my view, must have clearly affected the result of the election.

I must therefore declare the election of the Respondent to be void and a new election to be held.

There will be a declaration accordingly and the court will certify to His Excellency the Governor General pursuant to section 82(3) of the Act that a new election shall be held for the East Honiara Constituency in accordance with such certificate.

G. J. B. MURIA

(G.J.B. Muria)
CHIEF JUSTICE