

THORNLEY HITE -v- ALLAN PAUL

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 207 of 1993

Hearing: 29 November 1993

Judgment: 2 December 1993

P. Lavery for Appellant

A. Radlyffe for the Respondent

C. Ashley for Attorney General

**PALMER J:** This is the petition of Thornley Hite of Iriqila, Vella la Vella against the winning candidate and current sitting member of parliament, Allan Paul, (the Respondent). Mr Paul polled 595 votes, whilst the petitioner, 498 votes.

The petition alleges that the election of the Respondent was not valid as Mr Paul and/or his agents had committed corrupt and illegal practices contrary to section 65(1) of the Act and/or such practices so extensively affected the result of the said election and accordingly it is not valid by virtue of section 65(2) of the Act.

Six instances of such corrupt and illegal practices have been raised, the particulars of which are contained in paragraphs 3(a) to 3(d).

It has been raised that the standard of proof to be applied in this point is as established by Muria C.J. in the recent election case between *Maetia -v- Dausabea* in his Lordships judgement. The standard of proof is stricter and has been described as to the entire satisfaction of the court. (following the approach in the case of *Alisae -v- Salaka* [1985/86 SILR 31, and *Mamata & Another -v- Maetia CC 115 of 1984 (HC)*).

Mr Lavery submits that this standard is a half-way house between the balance of probability test as opposed to proof beyond reasonable doubt. Whatever it is I am satisfied I can accept and do agree with his lordship that the test of the balance of probability does not apply.

I accept I must be completely satisfied that the allegations have been made out and that they do constitute the offence as alleged.

I now turn to the first ground raised in paragraph 3(a) of the petition the particulars of which read as follows:

*"On Wednesday 19th May 1993 Mr John Menisia, an agent of Mr Alan Paul, paid \$87.00 (should be \$77.00) cash for school fees of various children of 10 registered voters in Iriqila for attendance at Iriqila Primary School. The said payment was intended to influence the electors of Iriqila to vote for the said Alan Paul."*

There are two crucial elements that needed to be established to my entire satisfaction for this allegation to succeed. First, is John Menisia an agent of the Respondent? Three witnesses have been called by the Petitioner in support of this ground.

The first witness, John Mark Nonita stated in his examination in chief that John Menisia gave some money to him on the 18th of May 1993. He then stated the money was given by the Respondent and that John Menisia is the campaign manager for him. The money he said was given for the payment of fees of certain children attending Iriqila Primary School.

What he did not say is how he knew or came to know that it was the Respondent who gave the money to John Menisia, and secondly how he knew that John Menisia was the or a campaign manager of the Respondent. Mr Menisia has not been called by the Petitioner to establish or to verify what this witness had stated in court. His evidence is second best, because the best possible evidence, that can be given, is that from John Menisia himself, and the petitioner should have ensured that he provides the best possible evidence where it is available, to this court. It is not an excuse to say that because the Respondent will call John Menisia that he did not consider it appropriate to ensure that John Menisia would give evidence. It is the right of the Respondent to decide which witness he will call in support of his case.

Under cross examination by Mr Radclyffe, he was asked in essence, as to how he knew, or came to the knowledge or conclusion, that John Menisia was a campaign manager of the Respondent. His response basically was that because John Menisia was a verbal supporter of the Respondent, he came to the conclusion that he is a campaign manager.

With due respects to this piece of evidence, I must say that I find some difficulty in accepting his conclusion, merely from his observations, as sufficient, to satisfy me that the Respondent is a campaign manager.

Under re-examination, he changed his description of John Menisia as a campaign manager, to a spokesman, as he asks people to vote for the Respondent.

The second witness called was Teddy Lulavaki. In his evidence under oath, this witness stated also that, John Menisia told him that his children's fees had been paid by money provided by the Respondent and that he should think of him to vote for him. However, my comments about the first witness's evidence, is also relevant here in that, this is basically hearsay evidence and second best. The person who should have been called to confirm these is John Menisia himself.

As to the question of whether John Menisia is an agent, Teddy Lulavaki can only say that John Menisia is a supporter of the Respondent.

The third witness called is Paul Lolebule. In his evidence in chief he stated that again he was told by John Menisia that his children's fees had been paid by him.

However, there is no other evidence to establish that John Menisia is an agent of the Respondent other than what he said that John Menisia is a supporter of the Respondent.

Under cross examination, by Mr Radclyffe this witness agreed that his children's fees were paid by the Dovele Land Owners Association (DLO/A). However, under re-examination he stated that the money was provided by the Respondent. Again, there is no direct evidence to satisfy me to the required standard that the Respondent did give the money as claimed by these three witnesses to John Menisia.

In the Respondent's evidence under oath, he explained in great detail that the Dovele Land Owners Association had a scheme for the payment of children's fees whose parents were members of the association. For parents whose children are in primary school, it was agreed that the association will pay for their fees. For parents whose children are in high school, 50% of the fees will be paid by the Association, whilst the remaining 50% will be paid by the logging company, Allardyce Timber Company Limited. For children in tertiary education, the company will be responsible for the total cost of the fees.

In his evidence under oath, the Respondent denied any payments and involvement in the payment of the fees, pointing out that this was a matter between the landowners and the Committee of the Dovele Land Owners Association. He also explained that John Menisia is a landowner, and a person entitled to the benefits of the agreements made between the association and the company.

In his submissions, Mr Lavery sought to argue that because the Respondent was closely associated with the formation and establishment of the Dovele Land Owners Association that even such payment of fees by the Association would be perceived or

rather should be seen by this court as having sufficient influence to corrupt the minds of voting electors.

With due respects, the link in my view is not that simple to establish. The Respondent has given detailed evidence to explain how he has offered and made available his knowledge and skills to assist his people but that he is not a member of the Dovele Land Owners Association Committee. The decisions to pay school fees by the association and the criteria of payment, is determined by the Committee and not the Respondent. I am of the view that it is drawing a long bow to say, that people would be corruptly influenced by such payments by the Association, to vote for the Respondent. It is already common knowledge that the Respondent had played some part in the establishment of the Dovele Land Owners Association. But to then link the payment of fees with some corrupt arrangement or act by the Respondent in my view is too wide a gap to close.

There is no doubt in my mind that the sum of \$77.00 was received by John Mark Nonita for the school fees of certain children whose parents are as follows - Kopele: \$9.00; Muduvai: \$5.00; J. Menisia: \$ 5.00; John Wesley Otasiapa: \$ 5.00; Graham Torau: \$14.00; Moses Sivai: \$12.00, Paul Lolebule: \$ 7.00; Israel Liva: \$ 5.00; Sitinei Aukape: \$ 9.00; Teddy Lulavaki: \$ 6.00; bringing the total to \$77.00.

The essential link however between the payment of these fees and the Respondent is missing. That link can only be provided by the evidence of John Menisia, and as presented, the Petitioner's evidence with respect, is incomplete. I am unable to accept the evidence of these 3 witnesses in their entirety, especially when they have not been corroborated by John Menisia, and contradicted by the Respondent himself.

Taking all the evidence that is before me I cannot say that I am satisfied that John Menisia is an agent of the Respondent and that the Respondent gave him the money for the fees.

This brings me to the second element in ground 3(a), that the said payment of the fees was intended to influence the electors of Iriqila to vote for the Respondent.

This element must necessarily follow on from the first point raised. Where it has not been established to my satisfaction that John Menisia is an agent of the Respondent and that the Respondent had through him paid the fees of various children of 10 registered voters in Iriqila, then the question of whether such payment was intended to influence the said voters must necessarily fail.

The witness John Mark Nonita can only guess that the payment of the fees was intended to influence the 10 voters of Iriqila, based on what he alleges he was told by John Menisia.

The second witness's evidence is also based on what he has heard from John Menisia (which can neither be confirmed or denied). This witness emphatically stated that he did vote for the Respondent. It has also not been established to my satisfaction by this witness that the fees were paid to corruptly influence those registered voters.

As to the third witness's evidence, he contradicted himself under cross examination by Mr Radclyffe, when it was put to him that the Association had paid for his children's fees and he answered in the affirmative. Under cross-examination by Mr Ashley, he re-affirmed this answer. It was only under re-examination that he mentioned that there was an association with the Respondent for the payment of the fees and not the Dovele Land Owners Association.

Taking all the evidence together I am satisfied that this ground must be dismissed.

I now turn to ground 3(b). The particulars read: "*On the 11th of May 1993 Mr Alan Paul gave one outboard motor to the said John Menisia.*"

Under this ground, also 3 witnesses gave evidence in support. The first witness was also John Mark Nonita. This witness basically stated that he saw the Respondent bringing an engine to John Menisia's house.

The second witness, Peter Korabelama, confirmed seeing the Respondent bringing the engine, a 25 h.p. engine, in the second week of May and giving it to John Menisia. He stated that the engine was used by John Menisia's group. When asked under cross-examination by Mr Radclyffe what he meant by John Menisia's group, he explained, his line or family.

Under cross-examination by Mr Ashley, this witness stated that he thought the engine was bought by the Respondent for John Menisia because he is a supporter of the Respondent. When cross-examined further, he stated that the engine was not used for the campaign.

The third witness who mentioned something about this engine was Teddy Lulavaki. Under cross examination by Mr Radclyffe he stated that he saw the Respondent with another person by the name of Dedili bringing the engine to John Menisia. When he was asked if Allardyce Timber Company had bought the engine he said, 'I don't know'.

Before I consider the evidence of the Respondent I must point out here that the evidence of these three witnesses with respect, do not show any element of corrupt or illegal practice! All three witnesses agreed that John Menisia is a supporter of the Respondent. This seems to be common knowledge in Iriqila. So even if it is true, that the Respondent had bought the engine and given it to John Menisia, it would not have made any difference whatsoever. All witnesses agreed that the engine was used by John Menisia and his family, and at least one of them specifically stated that the engine was not used for the campaign. The element of corruption or illegality therefore in my view is virtually absent.

In the evidence of the Respondent however, he pointed out that the engine was delivered by Elisha Bianga. He explained in great length that the engine had been the subject of a request by the people of Iriqila as far back as January 1993. Because the demand was urgent, the engine was bought by the company on advance of royalty payments to the Dovele Land Owners Association, and taken by him in his canoe with Bianga, to deliver at Iriqila. He explained that at that time he was on his way to Paramatta to sort out the name of one of his nominator's, and when asked, he agreed, out of a sense of obligation in custom, and also because the outboard motor engine had been left for several days outside in the rain, and its cover was slowly disintegrating.

Mr Lavery made some remarks about the Respondent's denial in his examination in chief when he stated that Bianga took the engine. However, I am satisfied that what was meant was that the engine was taken by Bianga to deliver at Iriqila on behalf of the Dovele Land Owners Association and that the Respondent played no significant role other than to allow his canoe to be the carrier.

This ground too in my view must be dismissed.

I turn to the third ground raised. The particulars read:

*"On 19th of May 1993 at Tuduo village Mr Alan Paul stated that if he won the election he would supply 18 200 litre drums for copra driers in that area. After the election, such drums were distributed."*

The first witness called in support of this was Teddy Otipala. This witness stated that on the night of the 19 May 1993 he heard the Respondent say that there were 18 200 litre drums for the people at Tuduo village for their hot air copra dryers. He heard the Respondent say that the drums were at Leona village but that he would bring them after the election. On the 28th of May 1993, the drums were duly delivered. The promise that this witness described in his examination in chief was that the Respondent

said he would deliver the drums after the election. It was only under cross examination that the conditional promise surfaced.

However he did point out that he was not aware of any request from the people for drums. All he heard was promises. He stated that the drums were not needed by them and that they are still there, rusting away. This witness also stated that he did not vote for the Respondent.

Under cross examination by Mr Ashley this witness stated that he heard the Respondent say that he will help individual families if elected. Mr Lavery submits that this conditional promise made on the 19 May 1993 has not been contradicted by the Respondent.

However, this submission needs to be carefully weighed with the clear and concise way in which the Respondent went to great lengths to explain about the prior meeting held on the 10th April 1993, and how it was at that time, that the request was first brought to his attention. He explained how naturally out of his genuine concern and care for his people, he accepted the request, and although he knew he could respond almost immediately and have the drums delivered straightaway, he felt that because the election period was well within a couple of weeks, he decided to wait until after the election to have them delivered.

He explained fully that by waiting until after the elections and then deliver the drums, he was ensuring in his view, that no misunderstanding would arise about his actions. He stated that on the night of the 19th May 1993 it was possible he was asked about the drums, but denied making a conditional promise. He said he would give the drums anyway, whether he won or lost the election as he was naturally concerned for his people, as this was a matter that had affected their livelihood. He did state he said, that the drums were not to be delivered until after the elections.

The Respondent also explained under cross-examination by Mr Lavery that he found himself in some difficulty about the drums, as on one hand, naturally he wanted to help his people, but that if he promised to help his people he would be risking being misunderstood. So the safety net he made was to ensure that the drums were not delivered until after the election. He also pointed out that if he had the drums delivered before the election period then that would equally if not more, be considered as improper by some it seems.

When weighing the explanation of the Respondent as against the evidence of Teddy Otipala, I am satisfied that the Respondent's explanations are credible and give a full

and complete picture about the story of drums, as opposed to Teddy Otipala's evidence which only in my view gives one side of the coin.

George Lipavela's evidence is very limited in its value in that his evidence only confirms that the drums were delivered on or about the 28th May 1993.

There is one other point to note about Teddy Otipala's evidence. And this is that as far as he was concerned the issue of the drums was of no value or of little significance, as he did not need them. And that therefore it did not make any difference to his mind, as he did not vote for the Respondent anyway. Apart from this evidence, there is no other evidence to show or say that such promises could ever amount to a corrupt or illegal practice and accordingly this ground too must be dismissed.

The fourth ground relates to a promise alleged to have been made on the 6th of May 1993. This alleged that the Respondent had stated that if he won the election that he would use the discretionary fund under his control, of \$50,000.00 and share it amongst the villages of North Vella La Vella. In particular that \$10,000.00 would be provided for the Karaka Community Church building and \$10,000.00 for the Sibilado Church building. This promise was made to the son of one of the registered voters in the Tuduo area.

The crucial question about this allegation is whether it would amount to a corrupt practice if true.

The significance of this promise it seems in the mind of the witness Robert Maena is that, he was being bribed to procure electors at Karaka village to vote for the Respondent. However, there is no evidence to show that that was the Respondent's intention. All that allegation would amount to in my view is that it was a statement of future intention if he wins the election. No where does it say that the Respondent then told Robert Maena to write a letter to his father, or to write a letter to the village chief, or the pastor of Karaka village, and the chief or pastors of Sibilado village, about his intention, and to vote for him.

Robert Maena stated that he wrote a letter to his father, but pointed out that his father was a supporter of the Respondent anyway. So what difference or corrupt influence would it have?

Under cross examination by Mr Ashley, he stated that his father did not pass the word around about the promise, although he did discuss with some people in Honiara about what the Respondent had said.



I think it would be stretching the imagination a bit too far in such circumstances, to then say that such a statement would ever amount to a corrupt practice or illegality.

The Respondent in his evidence, stated that he usually tells people about his plans and intentions, and so it is possible that in the course of his conversation with Robert Maena he may have spoken about such plans and intentions, but not any promises.

I must admit that the way the statement is worded in my view gives one the impression more of a statement of future intention, desire or plan, but nothing near to a promise in return for votes. To say, 'if I win the election I would do this', seems to me to be a fair statement of intention, but nothing to indicate a corrupt intention or arrangement.

There is no evidence from Robert Maena that in his letter he told his father to inform anyone else about the promise and to vote for the Respondent.

If there is any association with power and control, to be linked between the Respondent and the discretionary fund, I am satisfied that this statement nevertheless was made to a non-voter in Honiara, with no supporting evidence, to show that that non-voter was then asked to inform others about his power and control over the discretionary fund, and so they must vote for the Respondent.

The evidence of Robert Maena is crystal clear. He wrote to his father - who is a supporter anyway, but did not tell his father to spread the word about the power and control that the Respondent had over the discretionary fund.

Secondly, I do not think it requires much, to work out that if the Respondent would have such power and control over the discretionary fund if elected, then surely if any other candidate gets elected then he too should exercise or have the same power and control!

Thirdly, the Respondent has clearly stated that he did try and explain as much as he could to people when he visited them, and to find out about their needs and requests, as to how the Special Discretionary Fund worked. I do not think it is too difficult to explain, and for ordinary folk in the villages to understand that the fund is not directly under the control of the Member of Parliament; that although he must endorse the application, it is the Minister of Provincial Government who has the final say, whether to approve the application or not.

This ground too with respect must be dismissed.

Finally, ground 3(e), the particulars which read: *On the 18th of May 1993 at Leona Mr Alan Paul promised to supply a 25HP Outboard Motor and sports equipment for the community but in doing so he expressly made it conditional on him being elected.*"

Under this ground, only one witness was called, Mr Mahlon Kuve, who is also the President of the Vella la Vella Area Council. He stated that at a campaign meeting of the 18th May 1993 he asked the Respondent about some sports equipment and a 25 h.p. outboard motor engine. He was told by the Respondent that the sports equipment had been lost somewhere at Iriqila, however, the engine has already been bought but that they must vote for him before he will come and deliver it.

In contrast, the Respondent stated that as far back as January of 1993 he had gone to visit Leona village to find out what sort of things the people needed for purposes of making an application under the Special Discretionary Fund. At that visit it was made known to him that the people of that village wanted an outboard motor (25 h.p. evinrude). He then processed the application and forwarded it to the Ministry of Provincial Government. However, by May of 1993, the Special Discretionary Fund was suspended. But by then the Respondent stated that he had the impression, that the application had been approved. When he was asked by this witness during the campaign about the engine, he stated that he told him that the application has been approved but that there is nothing that can be done about it, as the fund was suspended until after the elections. He was then asked what will happen if he lost and he jokingly replied that they will not get it, but then explained that it is public money and that they will get it anyway, since it had been approved.

Under cross-examination, the Respondent denied making any conditional promise.

Having considered the evidence, I am satisfied that the issue about the engine on the 19th May 1993 was not a new thing for people at Leona village to be easily confused about. The people there knew as far back as January 1993 that an application had been made to the Special Discretionary Fund for it. They must have known too that the Respondent did not have full control or power over the purchase of that engine. Otherwise, the engine would have been delivered well before the elections and well before the fund was suspended. I am satisfied the Respondent did explain to the people about the workings of the Special Discretionary Fund.

I do not believe that an intelligent man like Mr Kuve should be so easily confused by the explanations of the Respondent, which I accept and believe as credible.

So, was a conditional promise made on the 18th May 1993? Having heard the evidence and taking into account that that issue was raised at a campaign meeting through a

question, and having satisfied myself that the Respondent is not only a very well educated and articulate man, but well informed and aware of the electoral offences for which he said he spent hours 'studying', I am not convinced that such a conditional promise as stated by Mahlon Kuve was made.

I am not satisfied entirely that what this witness has stated in court is the full story or gives the complete picture of what happened. I believe the Respondent in what he said, that he explained as fully as he could during that meeting about that particular engine. I accept that during such campaigns there are bound to be lots of questions and answers and explanations, and that it is possible for misunderstandings to arise and confusions to occur.

The explanations provided by the Respondent sound convincing, reasonable and in my view, are sufficient to shed doubt on the veracity of what I regard as a simplified version of what may have occurred in that meeting.

To say that he voted for the Respondent because of what was said in that meeting in my view is too simplistic to convince me as genuine, especially when it is clear to me that this witness must have had prior knowledge about the engine and so therefore asked about it.

I am not satisfied that the element of corruption or illegality has been made out too under this ground and accordingly must be dismissed.

Petition dismissed with costs.

(A.R. Palmer)  
JUDGE