

SETH LEKELALU -v- OLIVER ZAPO

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 208 of 1993

Hearing: 2 December 1993

Judgment: 9 December 1993

P. Lavery for Appellant

A. Radclyffe for the Respondent

C. Ashley for Attorney General

PALMER J.: This is the petition of Seth Lekelalu of Kuava village, Vella la Vella against Mr Oliver Zapo. Mr Zapo had polled 478 votes whilst Mr Lekelalu 383 votes.

The first issue raised relates to the question of interpretation of the words 'candidate elected' as used in section 65(1) of the National Parliament Electoral Provisions Act of 1980. Both Mr Radclyffe and Mr Ashley submit that section 65(1) applies only to any corrupt or illegal practice committed by a candidate only after a valid nomination has been made in respect of that candidate, pursuant to section 27 of the said Act. Mr Lavery on the other hand submits otherwise.

Section 65(1) reads:

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

The essential ingredients of this offence are that:

- (i) There must be an election,
- (ii) That a corrupt or illegal practice has been committed therewith;
- (iii) And that it is in connection to the election; and
- (iv) That it is committed by the candidate elected or his agent.

There are two important reference dates to note. First, is the day the election date was announced by proclamation by His Excellency, the Governor General of Solomon

Islands. This I believe was on the 15 April 1993. Secondly, is the date the nomination paper was delivered to the Returning Officer under section 27 of the Act. In Oliver Zapo's case, it was on the 19 April 1993.

This legal question before me has been raised as a result of certain allegations which are said to have occurred in January of 1993.

At that time, the names of intending candidates as well as the election date had not yet been made known.

Some of the practical difficulties we may have with taking the approach of Mr Lavery is that, if there is an alleged act of bribery that goes as far back as January of 1993, then it will not become relevant until it becomes obvious that the person committing the bribery had indeed become a candidate under section 27 of the Act. If the person committing the bribery however, decides not to stand in the election, then it would seem that the act committed becomes irrelevant.

I have considered the interpretation submitted by Messrs Radclyffe and Ashley, however I am unable to agree with that restrictive interpretation. If parliament had intended it to be so restricted, it would have said so in very clear terms. The crucial words in my view are 'in connection therewith'. If that link is sufficiently made out then in my view that would be sufficient. This is a question of fact and is a matter for the court to determine on the evidence before it.

I now turn to the individual grounds before this court.

First, under ground 3(c), it was alleged that on the 30th of March 1993 at Gizo, the Respondent gave \$20.00 to Nathan Mavo and \$30.00 to Boaz Bikokana with the words 'Thinkim O. Zapo'.

The witness called by the Petitioner in support of this allegation is Nathan Mavo. In his evidence in chief, this witness stated that the Respondent gave him and Boaz Bikokana the sum of \$50.00 and told them to buy cake for themselves. He then showed a thumbs up sign. There is nothing however, in this witness's evidence to show that a promise was ever made, and that it related to the coming election.

This incident was alleged to have occurred on the 30th March 1993, when the list of intending candidates had not yet been made known. It would seem with respect that the thoughts going through Nathan Mavo's mind were more of conjecture rather than anything else.

Under cross examination by Mr Radclyffe, this witness stated that he had not asked for any money, and so when it was given to them, he had many thoughts about the money. One of which was, that the Respondent may be a candidate in the coming election.

Under re-examination by Mr Lavery, he stated that he only heard news at that time that the Respondent would stand but did not know whether it was true or not. In other words, even this witness himself who was supposed to have been corruptly influenced did not know if he was being bribed or not!

I am of the view that this ground can be dismissed without further ado. There is no evidence of any element of corruption involved in the giving of the money, and no direct request to indicate that the payment was to be seen as an exchange for the votes of those two persons.

In his explanation of this incident, the Respondent stated that he met the witness Nathan Mavo and Boaz Bikokana, opposite the snack bar at Gizo. He stated that the witness told him that he was hungry, and that his mother had come from Simbo and wanted some money. As a result of this he says, he gave them \$50.00, out of a sense of obligation in custom, and had nothing to do with bribery.

I am equally satisfied that the version given by the Respondent squares up to a certain extent with what the witness Nathan Mavo stated. It would seem that although no direct request was made for the money, I can accept, that when the witness Nathan Mavo mentioned that he was hungry, and that his mother needed some money, the Respondent then in customary fashion responded by giving the money, without having the request verbalised.

It is important to note that sometimes one does not have to be asked directly or specifically, to respond to a particular situation. Sometimes the way custom works, is by hints and clues that one puts before a person which should enable that person to understand that this other person is basically asking for help, or assistance, or for money. Sometimes it is the way one expresses his needs that would make his countryman respond without having been asked directly. I can accept that what happened at Gizo opposite the snack bar may have been one of those instances when the Respondent must have felt that Nathan Mavo was basically asking him for assistance, but was too shy to do it directly.

This ground has not been established to the required standard and is accordingly dismissed.

The second ground relates to a payment of \$100.00 made by the Respondent to Chief David Quina at Lambu Lambu on the 15th April 1993 for his nomination. David Quina himself was called as witness in support of this.

In his examination in chief this witness stated that he was called into a house alone by the Respondent and told to sign a form (this is a nomination form, a copy of which has been submitted to court as an exhibit). He was then given \$100.00.

This witness however, explained that he signed the nomination form because of what the Respondent had told him about the \$3 million, which a logging company (Hyundai Timber Company Limited) will be making available to the people of Vella la Vella, if the Respondent won the election. I will come back to this question about the \$3 million when I consider ground 4(a). However, it is important to note that nowhere in his examination in chief did this witness say that he was offered \$100.00 in return for his signature as a nominator.

The only other witness who gave some evidence about this payment was Nollen Gaqo. His evidence is limited in its value other than to say that he was told by the Respondent that he had given \$100.00 to Quina. The circumstances in which that payment was made however was not described by Nollen Gaqo.

In his evidence under oath, the Respondent stated that this witness had come and asked him for some money to help him.

He needed some money to go to Honiara to sort out some marriage arrangements for his grandson who worked at NPF. The respondent therefore gave him the money. The respondent called a witness to confirm this. He is Chief Boaz Aroto, who he says was present when this payment was made.

Boaz Aroto stated in his evidence, that he was present at the house when David Quina came and asked the Respondent for some money. He then saw the Respondent giving David Quina \$100.00.

In his evidence he stated that there were only three of them present when this transaction was made.

It is clear that a sum of \$100.00 was paid to David Quina. David Quina however alleges that this was a bribery to get his signature and support for the Respondent.

In considering the evidence of this witness I must tread cautiously.

On one hand he was a nominator of the Respondent, whilst on the other hand, he has turned against him in this election petition. Why would he do that?

What David Quina would have this court believe is that he had been bribed into nominating the Respondent. On one hand I find it most incredible that the Respondent would be so desperate that he should bribe someone to nominate him. What is so special about David Quina that it would cause the respondent to go to the extent of bribing him?

In the election results, the Respondent polled 478 votes. I would have thought that any intending candidate would seek to ensure that one of his nominator was a solid and sincere supporter! I would have thought that an intending candidate would not risk such an incident!

The picture David Quina seeks to paint before this court in his evidence is that he is a naive rural dweller, who has been confused by the payment of \$100.00, to nominate the Respondent against his will. With due respects to him, I cannot say that I am so easily convinced. In his explanations in examination in chief, he had said that he was influenced by the proposed plans of Hyundai Company Limited, if the Respondent got elected. It therefore could not have anything to do with the so-called payment of \$100.00 and accordingly his allegation must have been either a made up one or false. The Respondent repeatedly stated that David Quina is like an uncle to him, that they are basically one people and he also stated after the court hearing that this witness had asked him for some money. I am satisfied this ground must also fail.

The third ground relates to the payment of \$50.00 for two football teams to enter a competition at Sibilado on the 16th April 1993.

The key witness called is Geoffrey Ziupala. He stated that on the 15 April 1993 the Respondent called him aside, gave him \$50.00, and told him to tell his boys to think of him on the 26 May 1993. He stated that at that time he noticed that the Respondent had a basket full of \$50.00 notes.

In his defence the Respondent stated that prior to the 15 April 1993 he had received two letters of request from some boys at Lambu Lambu, asking for assistance to pay for uniforms and soccer balls. He stated that he did not respond to those letters as he felt it was near election time and did not want to be seen as corruptly influencing anyone with money.

On the day the witness Geoffrey Zuipala approached him for some money, the Respondent stated that he told him to go and ask at the store. He stated that he had

some money with him at that time but refused to give any to that witness. He also denied showing him his basket of money.

When asked how or why the witness Geoffrey Ziupala should lie in court, the Respondent stated that someone must have influenced those witnesses to come to court and lie against him. It is clear to me that someone is lying to this court.

Mr Lavery seeks to submit that the Respondent is lying, and that the court should believe the witness Geoffrey Ziupala. He submits that the basket full of \$50.00 is something that a witness would not easily forget; it is something so striking to a simple rural boy, that it is most likely that he will not forget it and come to this court to lie about it. This is possible, but why would the Respondent want to lie about such a payment when he had stated that two requests from the same person had previously been received by him, for monetary assistance, but that he had refused to help. It would seem to be so much easier to say, yes, I paid the money, but that this was in response to the two requests received from that witness and his soccer teams. The Respondent however, denies outrightly any payment to that witness.

Mr Lavery also submits that the evidence of Nollen Qaqa about what the Respondent told him confirms that payment. I will consider Nollen Qaqa's evidence in detail later, however it is sufficient to point out that Nollen Qaqa's evidence must be treated with extreme caution, as he has openly stated in court, that he can be easily bribed, and is a self-confessed liar.

This virtually leaves Geoffrey Ziupala's evidence, as against the Respondent.

There is no dispute that there was a soccer competition on at Sibilado. The witness Geoffrey Ziupala says that his team played. There is however no other evidence in support of this. I would have thought that the referee, or the organisers of the Soccer competition could have been called to confirm this. Further, apart from Geoffrey Ziupala's evidence, there is no other evidence to confirm that he did tell his team about the payment of \$50.00 by the Respondent, and that he told them then to vote for the Respondent. It is for the Petitioner to convince me to my entire satisfaction that such a payment was, corruptly made. The evidence produced by Geoffrey Ziupala does go to show to a certain extent that a payment may have been corruptly made, but when contrasted with the evidence of the Respondent, I cannot say, that I am entirely satisfied that that allegation has been established. That ground therefore must be dismissed too.

Ground 3(h) refers to a payment of \$20.00 to Maybe Kabokera at Kolokolo village on the 14th May 1993.

The main witness called in support of this, is Nollen Qaqa. He stated that the Respondent and him went to Maybe Kabokera, gave her \$20.00, and told her to vote for him in the general election.

Under cross-examination by Mr Radclyffe this witness stated that the Respondent went into the kitchen and said to Maybe Kabokera, a female: 'son, you vote me'. When asked again by Mr Radclyffe to confirm if the Respondent used the word 'son', he replied yes! The witness also confirmed that Maybe Kabokera is the daughter of a cousin brother of the Respondent.

In his defence, the Respondent explained that Maybe Kabokera is the daughter of his first cousin brother. In custom therefore she would look on him as a daddy. It needs to be understood, that the correct blood relationship between Maybe Kabokera and the Respondent is sort of like an uncle. However, in most cultures in Solomon Islands Society, such relationships are often described in terms of a father and child relationship, and I would say in certain instances, it has a much more closer bonding than perhaps, say in a westernised society.

This is the sort of relationship described by the Respondent, between him and Maybe Kabokera, and I could accept that such a relationship existed.

During the timber right hearing at Beiporo he was told that he had walked past Maybe Kabokera without talking to her. Just prior to this, Maybe Kabokera's father, had passed away. It would therefore be customary and natural for Maybe Kabokera to look to the Respondent, and expect him to help her, as and when circumstances require it. The Respondent stated that he was told that Maybe Kabokera was quite upset about being ignored, though he says this was unintentional, and so when he came around to her village during his campaign trip, he made up his mind to see her and comfort her. He did this by giving her \$25.00, not \$20.00. This payment as far as he was concerned was customary. It had nothing to do with the elections or any form of bribery. He denied emphatically what was said by Nollen Qaqa, that he told Maybe Kabokera to vote for him. I can accept that in such circumstances as described by Mr Zapo, a payment of some money does reflect a customary practice. His explanations in my view are quite reasonable and acceptable. On the other hand does the witness Nollen Qaqa, have any reason to lie? The answer must be considered in the light of what has happened in Nollen Qaqa's case.

Nollen Qaqa was one of the main man or supporter in the Respondents Campaign team. He was a close member it seems of his team. This close supporter has however, turned traitor against the Respondent. The Respondent described him colourfully as a Judas,

and described how it was Nollen Qaqa himself who had stated, that he did not want any Judas's in their midst, but that to his dismay, Nollen Qaqa was the very person who turned Judas.

What the Petitioner would have this court believe is that the witness Nollen Qaqa was never a true supporter. He was one of those false supporters (prophets), whose support had been obtained by bribery. And that bribery took the form of a payment of \$600.00, made sometime in March or April of 1993. And accordingly, his loyalty to the Respondent was never strong anyway.

The very fact that the witness Nollen Qaqa has confessed to this court that he took a bribe from the Respondent in order to support him, gives good reason for me to be very cautious about his evidence. If he was bribed to support the Respondent, then why has he now turned against him here. Has he too again been paid bigger and more pieces of silver to turn against the Respondent? He says he has not been paid any money, but has turned against the Respondent because the Respondent did not like him. I must say I find this a bit hard to accept.

On the other hand the Respondent, in his evidence on oath, stated that after the election, Nollen Qaqa asked him for \$50.00, but at that time he had no money, and so told him that he could not give him any. It was only after that incident that Nollen Qaqa turned against him.

Mr Lavery has sought to submit that it is most unlikely that Nollen Qaqa would turn against the Respondent for \$50.00. However, what must be understood is that if this witness can confess to the Court that he can be easily bribed to campaign for any candidate, then I do not think it is that difficult for him to be cross over a non-payment of \$50.00, at a time when he needed it or had requested it.

The motivations of his witness are very suspect.

I will now turn aside to consider the allegation of a payment of \$600.00 made to him in or about April of 1993. In his evidence under oath, this witness stated that he was given \$600.00 in return for his support. At the time he was given the money, the Respondent used a receipt book and wrote down something in it. He however did not show it to him or get him to sign it.

This witness stated that it was only after two weeks from the payment of the money that they began their campaign. This would mean that the payment was made in late March or early April of 1993.

In his defence, the Respondent stated that he gave Nollen Qaqo \$600.00 in January of 1993 to go and pick his family who were intending to go to Temotu Province. He stated that Nollen Qaqo is well known to him and that he came begging for money from him. He then paid him \$600.00 from the South East Vella Land Owners Association Fund after getting the consent of the Treasurer and the Secretary. He stated that the witness Nollen Qaqo signed for the money on the same date, the 16/1/93. The Respondent also stated that Nollen Qaqo is a best friend and that he usually came to him asking for goods such as tobacco, sugar etc. Sometimes he himself would bring food and he would give him money in return.

The receipt for the \$600.00 paid is numbered 82. It is dated 16th of January 1993. It has a name 'A. Pale' crossed out and the initials N.Q. written beside it. The amount of \$600.00 has been written using a different biro and a different carbon paper. The witness Nollen Qaqo stated in evidence that the signature on the receipt looks like his but denies that it is his.

Under cross-examination, the Respondent sought to explain that there were two people who were supposed to come and collect the money. It was the Respondent and another person. But because the other person did not come, he crossed his name out.

It is clear that a sum of \$600.00 was paid to Nollen Qaqo. Nollen Qaqo says that a receipt was written by the Respondent. The only receipt produced before this court however is receipt no. 82 and contains the date for the 16/1/93.

Nollen Qaqo says that the money was paid from the Respondent's own pocket. If so, then what would he need the receipt for? Secondly, if it is a bribe, then why would a receipt be used to record such a payment. The last thing the Respondent would want to do is to keep a record of it and thereby leave himself open to be found out easily at a later stage. Receipts are used to identify payments that are made at certain times, so that even if the recipient may wish to change or lie about his story, the receipt cannot be changed. It is possible that the receipt is not genuine, however that has not been established to my satisfaction, to the point that I can completely ignore it.

The witness Nollen Qaqo says that he was paid in April 1993. At that point of time he was going to see Danny Bula as he was planning to support him as his candidate. However, on being paid the \$600.00 he changed his support to the Respondent. Mr Lavery seeks to pick on what he termed as a slip by the Respondent under cross-examination when he said that Nollen Qaqo went to see Danny Bula in April.

With due respect, if one considers the Sequence of events, and the way the evidence of the Respondent was given, he did say that Nollen Qaqo went to see Danny Bula after he

had been paid the money. In his evidence, the Respondent stated that the payment was made in January of 1993 and that after, the witness Nollen Qaqa must have gone to see Danny Bula. It is quite unusual in my view that the witness Nollen Qaqa should go and tell the Respondent that he was going to see Danny Bula because he was intending to support him in the first place.

If it is true that he knew that the Respondent was intending to stand as a candidate too, then why would he go and tell the Respondent, "Oh, I am going to see Danny Bula, as he is my candidate!" I find that quite strange and unusual to say the least. With due respect, that does not convince me that what the witness Nollen Qaqa is saying in court can be relied on. Why did he go and tell the respondent that he was going to see Danny Bula? He says he had about \$2,300 in his pocket at that time and did not need any money. So, why did he not go straight to Honiara? It seems more likely that he did see the respondent because he needed some money. The receipt submitted to this court is very strong evidence that the payment was made in January of 1993 and not March or April. At the least, it goes to discredit the evidence of Nollen Qaqa.

The inconsistencies in the recording of the receipt on the other hand have not sufficiently discredited the probative value of that receipt to the point where I can discount it completely.

Taking all the evidence together, I am not satisfied that Nollen Qaqa has been bribed by the payment of \$600.00.

His subsequent evidence as to the particulars of bribery listed in the petition therefore must all be treated with extreme caution.

So coming back to the so-called bribery of Maybe Kabokera, I am not satisfied that this allegation has been made out, and must be dismissed.

One of the striking things in what Nollen Qaqa said and has been picked up by Mr Lavery is his use of the word 'son' to describe how the Respondent spoke to Maybe Kabokera. No logical explanation has been produced. However, on one hand it is possible that the word used by this witness was the equivalent of the word 'child'. It is possible that in some cultures, there may not exist any separate word to describe a daughter as distinct from a son.

It is possible this witness may have been confused in that way. One would need however to delve into the Vella La Vella language to find out if there are indeed separate words that can be used for a son and daughter, or is there a single word which describes either, depending on the context which it is spoken.. The other possible

explanation is that this witness was lying, and therefore has been confused, and so used the word 'son' to describe a female person in that confusion!

I now turn to ground 3(i). This related to the payment of money in 3 instances. First, is the payment of \$5.00 to Wynnie Willie Hite; second, \$10.00 to Susie Pitamama, and \$10.00 to Grace James.

The alleged payment to Wynnie Willi Hite was witnessed it seems by her husband, Clement Bulehite. He says that on the 15/4/93, during the timber rights hearing at Lambu Lambu, he saw the Respondent gave \$5.00 to his wife and told her to think of him.

The evidence of the Respondent however is that he gave the \$5.00 to Wynnie Willi Hite because she helped in the cooking of food for him and his supporters at Beiporo Village. He also stated that he gave \$5.00 to Grace James for cooking, and \$10.00 to Susie Pitamama for a bag of potatoes.

In his evidence under oath, Clement Bulehite stated that the payment was made at Lambulambu and therefore couldn't have anything to do with cooking. I must say that I find the explanation of the Respondent more reasonable and logical as opposed to a straight forward giving for no apparent reason. The recipient Wynnie Willi Hite has not been called in support to confirm the allegation of Clement Bulehite. Why is this? Is it that only Clement Bulehite can give the relevant evidence in support of the allegation, but not Wynnie? Parties must understand that in any particular case it does not help them much if all relevant witnesses have not been called and no reasonable explanation is provided. The court is involved in the due dispensation of justice, but in order to effectively perform that crucial function, the evidence of all relevant and available witnesses should be produced at all costs. I am basically not satisfied that this ground has been established to my entire satisfaction.

In respect of the payment to Susie and Grace Pitamama, Sapolo Pitamama was called as a witness. His evidence in my view however confirmed the explanation of the Respondent, because he stated that during the campaign at his village at Beiporo, the Respondent and his group spent a night at their house. He says the Respondent went into their kitchen and gave Susie Pitamama, his mother, \$10.00, and Grace (his sister) \$10.00 too. He however denies that his mother cooked for the Respondent and his group. When asked about the \$10.00 being given for the bag of potato, he denied any knowledge of this.

I again wonder why the two recipients were never called to give evidence. I cannot with due respect be satisfied with the evidence of Sapolo Pitamama alone on these two allegations.

Although there has been a denial about the two women cooking, the fact that he admitted to the Respondent and his group spending a night with them, if not at their house, at a rented house nearby, makes it in my view all the more likely, that some women will be asked to help for meals, and surely if that is so, the Respondent will be obliged not only in custom to give those women something in return, but plain common sense in my view will say, that something should be given to those women for expending their time and energy in cooking for the Respondent and his team. The Respondent did not go at the request of those women, but on campaign business, and surely some sort of remuneration or compensation should be made for those who cooked for them. I do not see this as, or could ever be amounting to, any corrupt arrangements, and accordingly these allegations too are dismissed.

Ground 4(a) relates to an alleged promise that if the Respondent was elected, that Hyundai Timber Company Limited would provide \$3 million to the people of South Vella la Vella for the construction of schools, roads, clinics, resthouses, church building etc.

The first witness to say something about this is Nollen Gago. He stated how the Respondent had told him that if he won the election the company will provide \$3 million to help the people with. He stated that when they went on the campaign trail, they told people about this, so many people believed them.

Under cross examination, when it was put to him that the money however was not confirmed as there was still too many land disputes, he did not answer. He pointed out that the Respondent is a big man in the company.

The second witness called in support of this is Moses Izapitu. He stated that in April of 1993, the Respondent invited some people at Marivari, consisting of two tribes to attend a meeting at Liapari, for them to work out a breakdown as to how the \$3 million was to be used. The manager of Hyundai Company was present at that meeting and addressed the gathering. The manager said that the money is pure money from the Company to offer to help the people of Vella La Vella with.

It is interesting to note that there was nothing mentioned by this witness to link the \$3 million with the elections, and conditional on the Respondent winning the election!

This is to be contrasted with the evidence of David Quina too who stated, that the \$3 million was conditional on the Respondent winning the election.

In his defence, the Respondent explained how his relationship with the company can be traced as far back as 1989. In the negotiations that went on between the company and the Land owners, he was chosen as the Chairman of the Chief's Committee at South Vella la Vella. When the South East Vella Land Owners Association was formed in late 1991, he was elected as the President. It therefore became well known to the local people there that the Respondent played a major part in the activities and programmes that went on between the company and the people. As early as 1991, it seems the company had already indicated that it was willing to give \$3 million to the people of Vella la Vella to assist them with various projects and activities. However, this changed to apply only to the people of South Vella la Vella because a second company by then had come into the scene and was working on North Vella la Vella. The company then also made it clear that it could only provide the \$3 million if all the various land owners could co-operate and come together.

He stated emphatically that he never told the people that the \$3 million would be conditional on his being elected. It was however conditional on all the landowners coming together. He stated that the people knew about this \$3 million because it had been raised by the company a long time before the elections.

I think it can be accepted that the company does support the Respondent. If that is so, then as asked by Mr Radclyffe, so what! Many private companies do have their favourite candidates. There is nothing wrong with that.

The picture which the petitioner seeks to present to this court is that the company and the Respondent have corruptly influenced voters by making extravagant promises of \$3 million to assist the local population.

However, I am not satisfied that that has happened in this case. One of the key witnesses, Moses Izapitu, whom I accept as a fairly objective witness, at no point stated that any such extravagant promise was made. There was a meeting in April and the Company Manager spoke to the gathering, but there was nothing in his evidence to say that the manager of the company made the provision of the \$3 million conditional on Mr Zapo being elected.

I do not accept Nollen Qaqo's evidence. The same goes for David Quina.

David Quina's first allegation against the Respondent was that he was bribed and so he nominated the Respondent. In his examination in chief however, he never gave that

reason, but said that he signed the nomination form, because he was told about the \$3 million. If he wasn't speaking the truth about the \$100.00 payment, then it is also likely that he is not speaking the truth about the conditional promises of Hyundai Company and the Respondents.

As concerning Nollen Qaqa, I do not think I can say anything further about him as a reliable witness. He has so discredited himself by saying that if anyone else bribes him to tell a lie, he will do it. One can never know if he is indeed speaking the truth, and accordingly should not rely on his evidence in its entirety.

The explanation of the Respondent is reasonable and in my view, strongly supported by the evidence of one of the Petitioner's own witnesses, Moses Izapitu.

This ground too is dismissed.

Ground 4(b) relates to the hiring and feeding of between 14 to 20 people during the campaign tour of two and half weeks and the distribution by those supporters of funds and foodstuffs to potential voters.

The only evidence produced in support of this ground came from Nollen Qaqa himself. Much of this came from his personal observations and opinion.

It was not denied by the Respondent that he had about 14 people assisting him. At times this grew to more than 20. However, he pointed out that these were all volunteers. During weekends, he would pay for their fares to go back to their villages and gave money to take home. This he did because throughout the week, they stayed with him and so naturally, could not go to the gardens to get food etc, and so he had to give them money to give to their families back at their villages. And during the period when the 14 or so people were on the campaign trail with him, he naturally had to feed and look after them.

There is no evidence, or very little evidence, to show that the Respondent's 14 supporters had funds and foodstuffs to distribute to potential voters.

When Nollen Qaqa was asked by Mr Ashley as to how he knew that the Respondent had spent more than \$10,000.00, he said it was just his opinion, but he could not prove it.

This ground too must be dismissed.

I now turn to the final ground, 4(c). The first piece of evidence came from Clement Bulehite, who stated that he heard the Chief Jocelyn Sisakale say, that the Respondent

will open a fund for the Ughele tribe if, he got elected. However, he never mentioned how much the fund will be opened with. The only other witness to give direct evidence in relation to this is Nollen Qaqa, who stated that the Respondent said this when they went on campaign.

In his defence, the Respondent pointed out that Jocelyn Sisakale is a supporter and a close friend. They also come from the same family. He stated that if Jocelyn requested him to do something, then naturally he would do it out of his customary and family obligations to him. He however, denied telling Nollen Qaqa about the existence or establishment of any such fund.

The crucial question in this is, was such a promise made to the Ughele tribe? The only evidence we have is that of Clement and Nollen Qaqa. But there is no other direct evidence to show that such an arrangement was corruptly done. Mr Zapo has stated in court that if Chief Jocelyn Sisakale had specifically requested this from him and he had agreed to do it for them, then what is wrong with that. He says that his father is from Jocelyn's tribe - the Ughele tribe, and so basically they are his people anyway, and if he has been asked to do something for them, then naturally he would do it.

I am not satisfied that this ground too has been made out. I am not satisfied that Jocelyn Sisakale promised the Ughele tribe that he would open a fund account for the tribe with \$100.00 if the Respondent won the election. The evidence of Clement Bulehite on this is basically hearsay. The evidence of Nollen Qaqa on this may be direct evidence, however when taken into comparison with the whole of his evidence generally and as contrasted with the evidence of the Respondent I am not satisfied that such a promise was corruptly made. There is no other evidence from any other member of the Ughele tribe to say that such a promise was ever made to them by Jocelyn Sisakale! This ground is accordingly dismissed.

The other grounds judgment not mentioned in this judgment, but listed in the petition are also dismissed for lack of evidence. Petition dismissed with costs.

(A.R. Palmer)

JUDGE