

RONALD ZIRU, CHARLES KELLY -v- S.C. TAHILI(IN HIS CAPACITY AS WESTERN
PROVINCIAL ELECTION RETURNING OFFICER, ATTORNEY GENERAL

High Court of Solomon Islands
(Awich, Commissioner)
Civil case No. 354 of 1995
Hearing:
Judgment: 7 December 1995

*C. Ashley for Applicants
Attorney General for Respondent*

Awich, Commissioner: The applicants, Ronald Ziru and Charles Kelly, cited as the first and second respectively, came by way of summons seeking what was referred to in the summons as: "relief in the following orders:-

The First and Second Applicants who are from Kindu and Lengana villages respectively in the Western Province but who reside in Honiara are ordinarily residents of the Western Province in terms of section 15(c) of the Provincial Government Act, 1981, therefore are qualified to be candidates for membership of the Western Provincial Assembly."

It is obvious that the applicants were really seeking declaration that they the two applicants who live in Honiara because of what they describe as "work and other commitments," but who, "originate from Western Province" and have each lived there for, "40 years" are, "ordinarily resident in the Province" in terms of s.15 of the Provincial Government Act No. 7 of 1981.

Election for the Western Province Assembly is due on Monday 11th, December 1995, some 3 days away. The applicants have each received letter from the Returning Officer of the elections, advising each that the Returning Officer acting in terms of Provincial Assemblies Election Regulations disqualified their nomination as candidates. There was muddle about the correct regulation. It is clear though that the Returning officer can act under regulation 13(a) to hold that nomination paper is invalid. He however, cannot do so unless one of the grounds under regulation 14 exists. One such ground is that a candidate is found not to qualify for nomination or for membership of the provincial assembly. The Returning Officer has informed each of the applicants that his nomination is invalid because he does not qualify under s.15 of the Act, he is not "ordinarily resident" in the Western Province. Applicants contend that they are ordinarily resident, thus this application.

Difficulty arises because regulation 14(2) provides:

"A decision by the Returning Officer that the candidate has or has not been validly nominated shall be final and shall not be questioned in any proceeding whatsoever except on an election petition under these Regulations."

Learned counsel Mr Ashley has submitted that regulation 14(2) conflicts with s:15 of the Act and so the court should not act on it, further that the good intention of Parliament will be defeated in the event of abuse of the regulation. I am unable to agree that the applicants have audience with court on those grounds at this stage other than by election petition later. The result is that they will not be able to be candidates in Monday election, should Returning Officer maintain his decision, but may well bring their election petition immediately, and if they succeed, elections in the wards where they have been disqualified will have to be annulled and re-election held.

It appears to me that this matter has not received the attention of the Hon. Attorney general. He was served with the application papers on 5 december 1995 and amendments today, but none has appeared on his behalf nor did he file any papers in oppositions. There is no indication whatsoever that the Returning Officer has received any advice from the Attorney General or the Legal Advisor to Western Province. The expression ordinarily resident has been interpreted in this court before and in the National Court of Papua New Guinea. It has also been considered in many divorce cases and tax cases in England. this is not the time to go into great detail. I shall only mention that in this court, according to the case of *TEGAVOTA v BENNETT* [1983] SILR 34, the court held that the defendant who lived in two places; Kakabona Village and with his uncle in Honiara and worked for Ports Authority was ordinarily resident in Honiara and so qualified to be a candidate in the election to the Council. The Court observed that local circumstances of Solomon Islands was to be taken into account.

What I have said in the preceding paragraph is only an observation, it is not a determination of this case; that will have to wait for election petition should the Returning Officer's disqualification of the applicants remain, and should they decide to petition and the facts remain the same. The court is bound by regulation 14(2) and cannot question the decision of the Returning Officer at this stage. The Court is unable to grant the order sought, the application is dismissed. As nobody appeared for the Attorney General (Respondent) no order as to costs has been considered.

Dated at Honiara this 7th day of December 1995.

(Sam Awich)
COMMISSIONER