

AFU LEAH BILLY V. JOSES SANGA & WILFRED S. MANI

**High Court of Solomon Islands
(Palmer ACJ)**

Civil Case Number 10 of 2002

Hearing: 21st March 2002
Judgment: 22nd March 2002

Petitioner in person

Respondent in person

A. Mekaui for the second Respondent

Palmer ACJ: This is an application by the Petitioner in person by summons filed 27th February 2002 for orders inter alia to have her petition filed 25th January 2002 amended. Her summons is supported by an affidavit she filed on 27th February 2002. Petitioner's application consists of two amendments; those that relate to particulars of the petition and those that consist of fresh matters or allegations raised since filing of the petition. I will deal with the second amendment first.

Rule 25 of the Election Petition Rules 1976 ("the Rules") governs any application for amendments to a petition. I quote:

"A Judge may from time to time, by order made upon the application of a party to the petition, postpone the beginning of the trial to such a day as he may name and may at any time before or during the trial, upon the application of the petitioner, allow the petition to be amended upon such terms and condition as may be just. Such applications shall be made by motion on notice to the other party to the petition."

On first impressions, it would seem that the Court has jurisdiction to consider the application for amendment of this petition to include a fresh charge or ground. When this rule however is considered in the light of section 83 of the National Parliament (Electoral Provisions) Act [Cap. 87] (hereinafter referred to as "the Act"), the section that fixes a time limit when an election petition can be lodged, it is my respectful view that any such construction cannot be entertained. To do so would be to have the effect of allowing a petition to be lodged after the due date had lapsed. For instance, if the petition could be dismissed on the ground that it is frivolous and vexatious or that it does not disclose any substantive matter but then the petitioner is allowed to file fresh grounds after, that would have the effect contrary to section 83 of having a petition filed after the due date. A petition dismissed on grounds that it is frivolous or vexatious simply means that on the due date no valid petition had been filed. It would be contrary therefore to section 83 to allow the petitioner to amend her petition by filing fresh grounds or material, the effect of which would be to allow her to file a petition out of time. The court does not have power to do that (*see Halsburys Laws of England 3rd edition paragraph 777, Cremer v. Lowles 1 Q.B. [1896] 504*). It is my respectful view rule 25 must be given a restrictive construction for it to be consistent with the effect of section 83 of the Act.

Mr. Sanga made reference to the case of *Martin Magga v. Michael Maina CC 213 of 1997* in support of his objections to the amendment to include fresh charges. I have had a look at the file but have not been able to locate any written judgment of the court in support of his submissions. The presiding Judge his Lordship Sir John Muria CJ may have said something to that effect during the hearing of that case but it has not been recorded. Nevertheless, Mr Sanga's submission is still valid.

The application therefore to include subparagraphs 9(2) and (3) to her petition must be denied. I am satisfied those are additional or fresh matters which she wishes to include in her petition and for the reason given cannot be included.

As to the other amendments sought, those pertain to particulars of matters already raised in her original petition and I do not see any reason why they should not be allowed.

The second order sought is for the Ministry of Health and Medical Services and/or its Officers to produce copies of birth certificates or notices that it may have regarding certain persons. Again I see no reason to refuse this. I think the order should be directed to the medical officer in charge of the hospital in which the records are kept. The Petitioner in my respectful view should file details of where the records are kept so that appropriate orders can be made. For example, if the records are kept with the Central Hospital Honiara, then they can be directed to the Medical Superintendent of the Central Hospital.

I have also made directions regarding further carriage of this case, however after cogitating overnight over those directions, I have decided to vary those orders. All that the parties will be required to do is to file list of witnesses they wish to call. There was some indication that there may be witnesses who may not be willing to come to court to give evidence. There is provision for that in the High Court (Civil Procedure) Rules, 1964 [Order 39 rule 26 and following]. They can be compelled to attend by *subpoena ad testificandum*. I now include the variation in this judgment.

ORDERS OF THE COURT:

- 1. Dismiss application to include fresh grounds only in petition but otherwise allow other amendments sought in the summons filed 27th February 2002.**
- 2. Grant orders sought in paragraph 2 of the said Summons. Petitioner to file details of which hospital or persons the orders are to be directed against within 7 days.**
- 3. Parties to file list of witnesses they will be calling during trial within 7 days.**
- 4. Petition to be listed for hearing by the Registrar of High Court within a month's time or as soon as thereafter.**
- 5. Costs reserved.**

The Court.