

WILLIAM GIGINI -V- ERIC NOTERE

HIGH COURT OF SOLOMON ISLANDS
(PALMER ACJ)

CIVIL CASE NUMBER 9 OF 2002

HEARING: 25th April 2002, 26th April, 1st May, 2nd May, 22nd May – 24th May 2002, 28th May 2002.

JUDGMENT: 6th June 2002

Bridge Lawyers for the Petitioner

G. Suri for the Respondent

J. Keniapisia representing the Attorney-General as Amicus Curiae

Palmer ACJ: The Petitioner, William Gigini was one of five candidates contesting in the national general elections for the Gao/Bugotu Constituency in the Isabel Province. The others included the Respondent (Eric Notere), Nathaniel Supa, Basil Manelegua and Josiah Riogano. After the votes were counted, the Returning Officer declared and returned Eric Notere as being duly elected. He polled 987 votes whilst the Petitioner polled 789 votes, a difference of 198 votes.

Case for the Petitioner

The Petitioner comes to court seeking to have the election of the Respondent overturned and declared void on the ground of corrupt practices alleged to have been committed by his supporters contrary to section 66(2) of the National Parliament (Electoral Provisions) Act [Cap. 87] (hereinafter referred to as "the Electoral Act").

The Petitioner alleges that two of the Respondent's supporters, Rex Bogese and Isaiah Tukupaka, had engaged in corrupt practices which aimed at inducing electors to vote for the Respondent. The corrupt practices alleged involved the setting up of a financial scheme in which receipts were issued under the pretext of collecting funds from supporters or those who wished to support the Respondent as their candidate in return for promises of assurances of payment of larger sums of money on condition that the Respondent won the election. The petition alleged that voters were told that for every one dollar paid, a sum of \$100-00 would be paid on condition the Respondent won. So if a voter paid \$2-00, he/she would receive \$200-00, if \$3-00, he/she would receive \$300-00, if \$4-00, \$400-00 would be paid and \$5-00, \$500-00 would be received. All those promised amounts of money were conditional upon the Respondent elected and returned as the winning candidate.

The Petitioner alleged that the scheme was widespread in the Gao/Bugotu Constituency but particularly in the two villages, Nagolau and Kamaosi and surrounding villages where Rex Bogese and Isaiah Tukupaka lived. It was alleged that many who purchased tickets were induced by the lure of financial rewards to vote for the Respondent.

The Petitioner also alleged that tickets were issued free in certain cases to lure voters to vote for the Respondent. In some instances it was claimed the perpetrators of the scheme offered to make the payments themselves but that these were to be repaid when the financial rewards were paid by the Respondent on winning the election.

The Respondent's Case

The Respondent does not deny the existence of the receipts. He seeks to point out though that this was a private fundraising scheme organized without his prior knowledge by his supporters at Kamaosi and Nagolau. He denies knowledge of and involvement in the financial scheme described by the Petitioner but points out that if anything it was a perfectly valid and legitimate fundraising activity by his supporters and did not fall foul of section 66(2) of the Electoral Act.

Counsel Keniapisia for the Attorney-General supports the version sought to be put forward by the Respondent.

The Issues for determination

The issues for determination derive from the elements required to be proved as set out under sections 66(2), 70 and 71(a) of the Electoral Act. Counsels have adverted to these in their submissions. There are four basic elements required to be established under section 66(2) if the allegation of corrupt practice is to succeed:

- (a) whether there was a corrupt or illegal practice committed?
- (b) whether the corrupt or illegal practice was committed for purpose of promoting or procuring the election of the Respondent?
- (c) whether the corrupt or illegal practice was so extensively prevailed? and
- (d) whether the extensiveness of the practice was such that they may reasonably supposed to have affected the results?

The Burden of Proof

The burden of proof necessary to establish whether an act of bribery or corrupt practice had been committed obviously must be on a higher plane than the normal standard in civil cases on the balance of probability, but falls short of the criminal standard. This is really what was meant by being satisfied to my entire satisfaction (see the phrase used In re Menyamy Open Parliamentary Election (1977) PNGLR 302, followed by Wood CJ in Thugea v. Paeni [1985/86] SILR 22 and Alisae v. Salaka [1985/86] SILR 31). This in respectful view is but the same test referred to by Ward CJ in Haomae v. Bartlett [1988/89] SILR 35 at page 37 paragraphs 90 – 105 (see also Tegavota v. Bennett [1983] SILR 34 at page 36) where his Lordship states:

"I do bear the seriousness of the allegation in mind and accept I must find proof that is sufficiently clear to support such an allegation."

See also what was said by Frost CJ in In re Moresby North Parliamentary Election No. 2 (1977) PNGLR 448 in which his Lordship describes the test as "...clear and cogent proof so as to induce, on the balance of probabilities, an actual persuasion of the mind that the candidate did in fact lack the required qualifications."

Phipson on Evidence (12th Edition) at para 123 cited by Wood CJ in Alisae and Salaka (ibid) at page 35 sets out succinctly the appropriate test to be applied:

"The degree of probability which must be established will vary from case to case. The degree depends upon the subject matter. A civil court when considering a charge of fraud will naturally require for itself a higher degree of

probability than that which it would require when asking if negligence is established. It does not adopt so high a degree as a criminal court even when considering a charge of a criminal nature; but still it does require a degree of probability which is commensurate with the occasion. Likewise a divorce court should require a degree of probability which is proportionate to the subject matter."

His Lordship Sir John Muria CJ in *John Maetia v. Charles Dausabea* Civil Case Number 266 of 1993 (unreported) sought to finally put the matter to rest as to the test to be applied:

*"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 allegation 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."*

The test is higher than the balance of probabilities but lower than the criminal standard of proof beyond reasonable doubt. It can be described as a halfway house test between the mere balance of probability test as opposed to proof beyond reasonable doubt (see *Thornley Hite v. Allan Paul* Civil Case Number 207 of 1993 judgment delivered 2 December 1993).

The Evidence

Is there evidence in support of the alleged corrupt or illegal practice? Petitioner called a total of 17 witnesses in support of his case.

The **Petitioner's evidence** (PW1) on the scheme comprised essentially of what those who had participated in the scheme told him. He was made aware of the existence of that scheme at Ole Village on 23rd November 2001. Five receipts numbered D89 – D93 were given to him at that village. These have been submitted to court as Exhibits 25, 26, 27, 28 and 20 respectively. He told the court that when he interviewed two of the receipt holders, he formed the opinion that this was going to cause problems for him and the other candidates. After the results of the election were known, he wrote to the two persons he believed were behind the scheme and asked them for their explanations. Copies of his letters and the responses of Rex Bogese and Isaiah Tukupaka are marked as Exhibits 2 – 5. The Petitioner told the court that the explanations given by those two persons did not tally with what he was told by the receipt holders he spoke to.

Casper Huhugu (PW2) sought to introduce evidence to the court that he was aware of this kind of scheme from a certain expatriate doctor who was then working at Buala Hospital. He was led to believe that this scheme had also been used quite successfully in one African country during elections. This witness told the court that on a certain date 28th March 2001, there was a meeting held in Room No. 2 of the Provincial Government Resthouse at Buala in which the scheme was explained to him and others by the expatriate doctor. He did not say who was present though it may be implied that John Manedika and Lyndon Bako were also present in that meeting because this witness asserted in his evidence that these two witnesses knew and had also told the Respondent about it. Apart from that assertion, this witness claimed that the Respondent himself mentioned the scheme to him on the same date. In cross-examination he told the court that the Respondent had approached him at that time and asked for his assistance regarding the scheme. He said the Respondent was a bit drunk at that time and was crying when he spoke with him.

The third witness, **Drummond Roroi** (PW3) also sought to introduce evidence to the intent that the Respondent had prior knowledge of and about such a scheme and the possible involvement of Rex Bogese ("RB") and Isaiah Tukupaka ("IT"). His evidence is the only direct evidence that the financial

scheme and the involvement of RB were pre-planned by and with the Respondent or were known by him.

He told the court the Respondent told him this at Jinale on a Saturday between 20th October 2001 and 3rd November 2001.

This witness also gave direct evidence of the involvement of IT and RB in the promotion of the scheme.

The fourth witness, **Joseph Atkin** (PW4) also gave direct evidence of the scheme by RB. His evidence however went further because when he told RB that he did not have any money RB gave him a free receipt worth \$5-00 and told him that he would pay for the receipt himself. He also said that RB told him that he can have the money changed if the Respondent wins the election because he would be getting \$500-00 for the \$5-00 receipt. This witness unfortunately could not produce his receipt as it had been lost. He was unshaken however about the fact that he had been given a free receipt and told to support the Respondent. This witness was firm in his mind about the description of the financial scheme by RB.

Other witnesses have confirmed on oath, the evidence about the existence and promotion of the scheme. Margaret Matemono, John Matemono, Amelia Teko, Georgina Harvey, Casper Kaerongo, Martin Hodgers, Ben Ngarahi and Mishael Harvey all gave evidence of having heard about the scheme directly from RB. Their evidence has been consistent and clear on this aspect of the scheme.

Other witnesses were able to implicate directly IT for the promotion of the scheme as well. These included Rebecca Rebi, Clarence Silverio and Etchell Manelau.

The Respondent's Evidence

The evidence produced by the Respondent on the other hand sought to portray that this was not a financial scheme but an innocent and legitimate fundraising activity carried out by some of his supporters.

The Respondent not only denies knowledge of or any involvement in the fundraising activity carried out by RB and IT but that in any event it was a legitimate activity. It had simply been taken advantage of by his opponents to give him bad publicity and mar his election campaign.

RB's evidence in essence was that the forms and receipt books had been given to him by Moses Mahika ("MM") for the specific purpose of raising funds to support the Respondent in his election campaign. He was not involved in the formation and organization of the fundraising activity from the beginning. He had been approached because of his status as a chief and elder in his village and also because he supported the Respondent.

His instructions were quite simple, that anyone wishing to assist may give contributions of \$1-00, \$2-00 etc. and that their names would be recorded in the form and receipts issued as evidence of their support. He told the court that that was all he told those who came to give contributions at his house. He denied going from house to house or holding any campaigns and denied telling anyone about any investment or financial scheme. He told the court that all he told those who came to his house was that this was simple fundraising activity in support of the Respondent. According to what he was told by MM, he believed that the fundraising activity was organized and formed by IT.

This witness also pointed out during cross examination that even when this issue was raised in the village as causing confusion, he was not perturbed about it as it was not true. He did not consider it

appropriate to hold any further meetings thereafter to try and clarify any confusions or rumours that may have arisen because the situation at his village was quite tense as well during that period. In spite of this he continued to issue receipts for contributions received. He says he collected something like \$10-00 after the Respondent left his village.

IT's evidence explains how the scheme was hatched by him and some others who supported the Respondent. The purpose was to raise funds to assist the Respondent in his campaign. He too stated in evidence that all he told people about were the contents of the form (Exhibit 6) and that this was a fundraising drive for those who supported the Respondent. The form and receipts both bear that out.

This witness however went on to say that when it was made known to him that there was a rumour being spread about what he was doing as a financial scheme, he went to those villages and clarified what he was doing. Also he made it a point not to issue any further receipts as he was sorry that he had upset the campaign of the Respondent.

Martin Sagiwa was called to confirm what was said by IT at Ulubea. This witness told the court that what IT said at Ulubea was only in respect of any contributions that any one wished to make towards supporting the campaign of the Respondent. Sagiwa told the court that he had invited IT to explain the fundraising drive at Ulubea. He contradicted the evidence of Fidi Silingi and other witnesses that IT had said anything about a financial scheme.

Thomas Tavake joined the Respondent's group on 3rd December 2001. He told the court he was told by IT to inform people in Hovi, Ligara, Tatamba, Wali, Huhukamoto, Vara, Rasa and Nagolau about the issue of the receipts. He was instructed to tell people that the issue of receipts was not an investment scheme but a fundraising activity for supporters of the Respondent. This witness says that he held a meeting at Hughie Bogese's house at Nagolau in which he sought to clarify to those present that there was no such thing as an investment scheme. This witness said that Amelia Teko was present at that meeting.

Two other witnesses were called by Mr. Keniapisia to support the Respondent's case that there was nothing of the sort described by the Petitioner or that any such investment scheme was widespread and well known in the Gao/Bugotu Constituency. These were the Election Manager for Isabel Constituency Lonsdale Bako and the Returning Officer for Gao/Bugotu Constituency Alex Sukulu.

Findings of Fact

Was the Respondent aware of the financial scheme or fundraising drive promoted by IT and RB? There were only two witnesses called by the Petitioner in support of this allegation. The first one had been Casper Huhugu. This witness claimed that the Respondent knew about the scheme from two sources. Huhugu asserts he was told about this scheme by Lyndon Bako and John Manedika. He asserts that Bako and Manedika were aware of the scheme from the same information he had obtained from the expatriate doctor working at Buala Hospital. The impression given was that they were aware of such a scheme. The Respondent however has called those two persons to contradict his evidence, that they were not aware of such a scheme and deny telling the Respondent about any such scheme.

The second source of information he (Huhugu) alleges came from himself. He told the court that the Respondent himself mentioned the scheme to him on 20th March 2001 at Room No. 2 of the Provincial Resthouse.

The Respondent however denies this and brands this witness inter alia, a liar. Whilst the evidence of this witness regarding his conversation with the Respondent has not been sufficiently contradicted, his

claim in respect of Bako and Manedika have been contradicted to the extent that it would not be safe to rely on his evidence as well regarding the conversation with the Respondent.

The second witness to give evidence in respect of the claim that the Respondent was aware of the scheme was Drummond Roroi. In his answers to further and better particulars filed on 22nd April 2002 this witness had claimed that the conversation with the Respondent took place at Jinale on 3rd November 2001. When he came to give evidence under oath however, this witness corrected what he initially alleged by saying that the conversation occurred on a Saturday between 20th ~~October~~ October 2001 and 3rd November 2001. His evidence regarding this encounter has been quite specific. Whilst he was non-committal about what the exact date was, he maintained it was on a Saturday between the hours of 9.00 and 10.00 am in the morning and could not be shaken as to its occurrence. This witness was very sure in his own mind that it occurred on a Saturday between 20th October and 3rd November 2001. When pressed under cross-examination however to try and identify the date he did not and to a certain extent was evasive about it.

In contrast, the evidence of the Respondent has been an outright denial of any encounter with this witness in that period or any discussions with him regarding any financial scheme. In his evidence before this court, the Respondent gave detailed account of the events of the 3rd and 4th November 2001. Drummond Roroi however did concede it seems that it may not have been on that Saturday. He did acknowledge in his evidence that one of those Saturdays was the Respondent's busy day referring obviously to the 3rd of November 2001 when the Respondent was busy with the cementing of the gravestone of his daughter.

The only other possible date therefore was the 27th October 2001. The Respondent did not give details of his movements on that particular date in particular between the hours of 9.00 – 10.00 a.m., although he did deny seeing or meeting Drummond Roroi on that date. He also told the court he was out on that date chopping and splitting firewood at Fera Island and loading them to take them home in preparation for the cementing of his daughter's gravestone. He did not say however, ~~what~~ what time of the day this was, especially when Roroi was quite specific about the time of day he met up with the Respondent.

So did such a conversation ever take place as alleged on oath by Drummond Roroi? In my respectful view, it appears such a conversation did take place, which would mean that the Respondent would have been aware of the financial scheme and that what RB and IT did do actually had been pre-planned. Unfortunately I am not completely satisfied with the manner in which this witness could not be committed to answer a very simple question put by Counsel Suri as to the possible date of the encounter. Having committed himself to the date of 3rd November 2001, as his answer to the further and better particulars requested by the Respondent, and now having decided to change the date of the encounter, he was obliged in my respectful view to cooperate with Counsels and try and identify the Saturday on which this encounter occurred. That unfortunately could not be successfully done, as this witness was somewhat uncooperative and evasive. This evidence would have been crucial to the Respondent's case for purposes of giving the Respondent opportunity to adduce possible evidence in rebuttal. To that extent, the benefit of such evasiveness and uncertainty must go in favour of the Respondent. It does not imply that such a conversation did not take place. I think it did take place. Counsel for the Respondent however has successfully raised some form of uncertainty, hesitance and resistance from this witness regarding the possible date and which must go in favour of the Respondent. To that extent, I can disregard that part of his evidence only and proceed on the basis that it has not been shown to the high standard of balance of probability that ~~the~~ the Respondent was aware of the financial scheme. The evidence of witnesses subsequently called by the Petitioner including the Petitioner himself and the Respondent and his witnesses too have sought to confirm to some extent that the Respondent may not have been aware of what was being promoted by RB and IT even if as alleged it was mere fundraising drive for him by his supporters.

Was there a financial scheme?

The next question for determination on the facts is whether there was a financial scheme or investment of something similar propagated by IT and RB? I have considered carefully the evidence of witnesses called by the Petitioner in support of this claim and the evidence called in rebuttal by the Respondent.

There has been a suggestion that the scheme was a fabrication by those who opposed the Respondent's campaign and was intentionally done to tarnish or spoil his campaign. The Respondent thought Casper Huhugu whom he labeled a liar, a corrupt person and conman in court might have done it. Mr. Huhugu however has given evidence in which he denied that he had any motives to unseat the Respondent. He did concede that as a member of a group though he did issue a service message ("Exhibit 7"), to correct any misstatements or misinformations, which may have been spread around and used as a platform during the campaign of the Respondent, regarding possible fundings or assistance from the Japanese Embassy. The service message read:

"Please take note that the mission statements by Mr Eric Notere that he has already secured aid projects / financial assistances for his supporters with the Government of Japan has been confirmed by the Japan Embassy in Honiara as unfounded and not true. Should you wish to re-examine for confirmation over this subject matter please check with the Japan Embassy in Honiara."

A group in Honiara called the Gao/Bugotu Honiara Awareness Group, of which he was a member, had issued this message. In his evidence before this Court, Huhugu told the court that he took this measure to remove any doubts any person might have regarding any such aid projects or financial assistance. Apart from the suggestion that he may be behind the spreading of the rumour about the financial scheme, no evidence has been adduced to show that Huhugu was the instigator or the person who fabricated the so-called rumour of the financial scheme. The Respondent did say that one of the things he do in his campaign trail was to clarify any confusions regarding any allegations of such assistance from the Japanese Embassy.

The other suggestion made was that it might have come from the Petitioner himself. The Petitioner however gave very clear evidence before this court in which he denied any such suggestions. He told the court, he first heard about the scheme on 23rd November 2001 from the receipt holders themselves. He produced receipt numbers D89, D93 (Exhibits 25, 26, 27, 28, and 20) given to him by those receipt holders. Again no evidence has been adduced to show that the Petitioner had fabricated the rumours or may have been privy to any distortions of the innocent fundraising drive carried out by RB and IT.

There has been some general suggestion that those who opposed the Respondent may have propagated it. Unfortunately, there is also no evidence to show whom or how this fabricated story or distortions may have come about.

Apart from those general assertions, no other specific person(s) have been identified as being responsible for distorting the truth of the fundraising activity carried out by IT, RB and others.

On the other hand, the Petitioner's case is that the so-called rumour or story about the financial scheme did not come from anyone else other than the receipt holders themselves, who heard directly from RB and IT and that it was not so much a rumour as a cleverly done scheme to attract and lure or induce voters to vote for the Respondent.

Has this been established? The evidence adduced by the Petitioner on the promises of financial rewards made by RB and IT conditional upon the Respondent winning the election on the other hand have been quite clear, frank and direct. The witnesses called told the court that it wasn't a rumour or

story that they had heard from somewhere else, but that it came directly from RB and IT. Those witnesses did not surmise or guess as to who told them and what they heard. They identified the maker of those statements, the dates they were made, where they were made, in some cases the circumstances in which they were made and what was promised when the receipts were paid. RB and IT denied these, but the evidence in my respectful view is clear and not sufficiently discredited in some instances.

Evidence against IT

Those who implicated IT were Drummond Roroi, Fidi Silingi, Rebecca Rebi, Clarence Silverio and Echel Manelau.

Roroi's evidence on this has been virtually unchallenged. During cross-examination by Mr. Keniapisia, he said that he personally saw and heard IT telling his people in the bush to buy receipts on the basis of the promises made although he himself did not buy into the scheme. His wife however did buy a receipt towards the scheme.

Rebi's evidence too on what and whom she heard it from was clear and virtually unchallenged. Her evidence has been corroborated too by her son, Clearence Silverio. He also gave unchallenged evidence that he heard this from IT himself when he came to their house and told them about the scheme. Echel Manelau also gave clear evidence that he heard details about the financial scheme from IT himself. Whilst Counsel Nori did not get very far during examination in chief of this particular witness, he witness did say in chief that it was IT that told them about the financial scheme. In cross-examination he repeated his story and remained firm in what he said.

I note Fidi Silingi did give direct evidence of having heard about such scheme or financial rewards being promised and promoted by IT. Under cross-examination however, she denied knowing IT prior to the issue of the receipt. This has been contradicted by IT in his evidence that what she says could not be true. Her credibility to that extent has been tarnished and I can discount her evidence.

As to IT's rebuttal of those allegations, these were denied. His explanations to the court were that he could not understand how any misunderstandings could have arisen from his explanations. This witness told the court that he did go around to people's homes to tell them about the fundraising drive. He said people came to him instead at Sir Dudley Tuti College, Kamaosi, to pay their contributions. Each time he issued receipts he would explain fully to them the contents of Exhibit 6 and their purpose. He did this in English, pidgin and Bugotu language. He denies telling people about any financial scheme or making any promises of the sort alleged against him.

Only at Ulubea he concedes he held a meeting but this by invitation of Martin Sagiwa. He also did the same there explaining the contents of the form in English, pidgin and Bugotu language and everybody present said it was "Gino Kuala" (straight tumas).

Exhibit 6 is the form containing the Notice to Supporters and reads:

"The National Election Day is about to arrive and each and everyone of us have the right to VOTE during this election day.

This Form is produced to keep hand in hand of our own supporters who bear the same trust in a certain candidate for our common good.

At this point in time, we are looking at MR. ERIC NOTERE for our GAO/BUGOTU CONSTITUENCY whom we do trust has the Heart of our common people of their daily problems affecting grassroots for ages.

He is man of principals with "Mottos" TO LEAD IS TO SERVE OTHERS, UNITED WE STAND DIVIDED WE FALL. A man who is ready to stretch out his hands to all old and young alike, the poor, hungry, thirsty, cripple, lame, blind, deaf, dumb and disabilities.

Let us all of us covered under these classes of people come together as one to achieve our common goal of self-reliance for GAO/BUGOTU once and for all.

<i>Name</i>	<i>Address Contribution</i>	<i>Receipt No."</i>
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The form has spaces for names to be inserted under the subheadings.

If what IT has told this court is indeed correct and true, then one does really wonder how the witnesses who have come to this court could have misinterpreted, misunderstood, misheard or misquoted his explanations and what he was doing? There is nothing in what is stated in the form above (Exhibit 6), to give room for any of those witnesses who have implicated IT, to be confused or to misunderstand him. There is nothing in the said form, which pertains to any promises of financial rewards or scheme. The form is clear. The receipts issued too with the words "supporters contributions" written in them are consistent with what he has told this court under oath. In fact the form as worded was directed towards supporters of the Respondent and appears to have been drawn up for purposes of keeping track with their supporters. That was the original purpose for which he claims they had been formed. So why should those witnesses come to court and tell this court that they heard something quite different falling from the lips of this man?

In their evidence before this court, some of the witnesses told this court that they were not so much concerned about what was written on their receipts as what they had been told and promised either by IT or RB. Some witnesses pleaded ignorance. They did not even understand what was meant by the words supporters. There were still others, who did understand what the words meant, but indicated that it wasn't true because they were not supporters. Those who fell into this category were Rebi, Kaerongo and Martin Hodgers. Rebi in fact told the court that promises of financial reward were what held her attention and caused her to purchase a receipt although she was not a supporter of the Respondent and was not willing to part with her money for any fundraising drive for the Respondent. Clearance Silverio also said the same thing, that he did not tell IT he was a supporter of the Respondent. He also told the court that the words supporter had already been written into the receipt when he received it. This witness conceded he did not protest at the words "supporters contribution" but pointed out that what attracted him was the promises of money made.

There were still others and this will become evident in the evidence against RB that were given free receipts contrary to the claims of a fundraising drive.

No motive too has been raised against those witnesses for coming to court to implicate RB in what he had done.

I note also that in his evidence in chief, this witness (IT) did not directly deny the allegations made by those witnesses. What is significant as well is that when it was put to him in cross-examination whether what the Petitioner's witnesses had said about the scheme were lying or that he didn't hear clearly, he replied that he couldn't answer that question.

There was some debate on the meaning given by IT as to the custom of giving one plate of fish and returning the same with something in it. The plate of fish given by supporters was obviously the contributions or money paid ranging from \$1-00 to \$5-00. He then sought to explain that the plate of fish or something to be returned was the election of the Respondent and that he would be a good

leader. Unfortunately, apart from Fidi Silingi, this question was not put to the other witnesses and therefore were not given opportunity to comment upon.

It would be mere conjecture on my part therefore to make any conclusions as to what those witnesses would have said whether that was the same understanding they had when this custom was put to them or that their understanding was different.

I do note however that when this same question was put to Paul Renton in cross-examination by Counsel Nori, he was evasive about what was meant. In re-examination he said that it was but an example of what was put out in the Notice to Supporters. Perhaps the example chosen was a poor example because the explanation given by Paul Renton and IT of good leadership or change of leadership sounds a bit shallow and illogical. Isn't the relevant question, if elected what the Respondent would do in return to those who had expended money towards his campaign? If I give you something, what would you give me back in return? In fact the evidence adduced by the Petitioner's witnesses showed quite clearly that the card that attracted them to part with their money was the promises of financial rewards even though some of them were not supporters.

I think it can be inferred that that the very reason why their names had been recorded in the forms and receipt books was so that they could be identified or singled out for purposes of returning the specific plate of fish whatever that may be, to them. To that extent, it would seem that the promises of financial reward appear to be more consistent with such an example than just mere leadership change. Obviously there would be those who supported the Respondent for other legitimate reasons. That is not the focus of this petition.

But it is significant too that the witnesses that came to court with receipts did not say that they paid those receipts because of their desire for a change of leadership. That may be so but it was the promises that had been made that had drawn them. They denied being told about mere leadership change and denied being told that that was the plate of fish they would get in return for their contributions. It wasn't the case of belief or assumption. Those witnesses told the court what they had heard from IT.

What about RB? Those who implicated him included, Joseph Atkin, Margaret Matemono, John Matemono, Amelia Teko, Georgina Havi, Casper Kaerongo, Martin Hodgers, Ben Ngarahi and Mishael Havi.

Margaret Matemono's evidence was based on what her husband John Matemono had told her. Whilst her evidence is not direct evidence it did confirm her husband's evidence in terms of consistency. She too was influenced by the promises of reward, which she had heard from her husband. John Matemono's evidence on the other hand directly implicated RB. His evidence is clear and direct. He was promised \$500-00 for the \$5-00 he paid if the Respondent won in the elections. He was attracted by the promises of money, as he needed money for the payment of his children's fees. He confirmed telling his wife about it and agreeing together to pay money to assist them with fees. This witness did disclose voluntarily that he supported the Respondent. Not only that, but this witness believed firmly in the promises made by RB even though he had heard the Respondent deny any possible fundings coming from the Japanese Embassy. In re-examination this witness clarified that whilst the Respondent denied expressly any rumours of assistance or funding from the Japanese Embassy, he did not deny or say anything touching on the issue of the receipts or the scheme perpetrated by RB. That with respect would be consistent with what the Respondent told this court because he had said that he told those who had asked questions about the scheme to go and see those who were spreading it as he had nothing to do with it and did not know anything about it. His approach was to leave the matter to IT and RB to have those "rumours" and any distortions clarified and dispelled. The effect of these on John Matemono was that he still believed or perhaps hoped that the promises made would be true.

This witness remained firm in his evidence and was never shaken or confused as to what he heard from RB.

Another witness who gave clear and direct evidence against RB was Amelia Teko. She told the court that RB, her next door neighbour, actually came to her house and told her about the money scheme, that if the Respondent wins, she would get \$100-00 for every \$1-00 paid, \$200-00 for \$2-00 etc. This witness too remained firm, confident and sure of herself regarding where this conversation took place and what was said to her by RB. She denied outright any suggestions put to her under cross-examination that she may have heard this from rumours. I find no reason to doubt what she said.

Again the same question must be asked, why if RB was telling people nothing more than that he was doing a simple fundraising for supporters of the Respondent, that these witnesses should come to court to lie under oath about what they claim RB had told them. It is pertinent to note that what we have before us is not just rumours that these witnesses heard from someone. This was direct evidence of what they heard and saw being perpetrated and propagated by RB and IT. They heard those words fall from their lips and each described the circumstances under which they were given.

Could there be confusion? Did they not hear him explain things properly? Both did not deny the encounters they had with those persons! What they deny are the promises of financial rewards if the Respondent wins and telling people to vote for the Respondent. The picture these two witnesses sought to paint before this court is that they never mentioned anything pertaining to any financial scheme to anyone that came to their houses. If so, then what did those witnesses hear?

One of the witnesses Kaerongo did concede that RB does not normally go around from house to house because of his position as a Speaker of the Isabel Provincial Assembly and as a chief. However in this particular instance, he says he saw him going from house to house campaigning about the election and that he actually came to his house and told him about the money scheme and gave him a free receipt.

If RB did not go around telling people about the scheme for the reason that he was a chief and the Speaker of the Isabel Provincial Assembly then why should these witnesses, (John Matemono, Joseph Atkin, Amelia Teko, Georgina Harvey, Casper Kaerongo, Martin Hodggers) come to court and perjure themselves? What is their motive for doing this if any?

Atkin in his evidence made it quite clear that he came to give evidence because of what was said by RB. No other motive could be established against him. It was put to him in cross-examination (quite correctly) that since he did not lose any money he had no reason to come to court. This witness was one of those witnesses who alleged having been given a free receipt. This witness's answer was quite frank and forthright. He told the court that he had come for no other purpose than to testify about what RB had told him about the money scheme and the expectation this created. He pointed out that what had actually transpired was that RB had lied to them and that it was not right for him to do that.

John Matemono thought it was an opportunity for him to get some financial assistance to help his children out at school. He gave \$5-00. This witness was quite forthright in stating that he believed what RB had said and that he supported the Respondent because of this.

Amelia Teko made it quite clear in her evidence as well that she gave money because of the promises of financial reward. She said she would not have been willing to part with her money if she had known it was but a fundraising drive directed towards supporters of the Respondent to contribute towards his campaign expenses. She in fact pointed out that intending candidates should prepare well for elections and not go around asking people for money. Her motives too could not be impeached.

Casper Kaerongo's evidence on what RB said too was clear and direct although he supported another candidate. This witness had maintained throughout that he was given a free receipt by RB. That evidence was never impeached under cross-examination, though he did concede that he had doubts about the truth of what RB told him. He nevertheless hoped that it would be true and that he would receive the money promised. I note this witness did answer in the affirmative when it was suggested to him that if he had invested money in the scheme he would have supported the Respondent. Apart from that, no other motive could be imputed to this witness for coming to court and lying about what he had heard from RB. His evidence is significant to the extent that it contradicts any suggestions that this was a fundraising drive.

In Martin Hodger's case it was put to him in cross-examination that he was paid money to come and give evidence in court. This witness denied that. He was one of those given a free receipt and told to vote for the Respondent although he was not a supporter. His receipt is Exhibit 18.

Georgina Havi also gave direct evidence of what RB told her. Her motives too could not be impeached. Her son Mishael Havi confirmed in court what he heard from her. As a result of this, he too requested a receipt to be bought for him. This witness did say he voted but his vote was disqualified as he was only sixteen years old at the time of elections last year and was not entitled to vote under our law. Section 55(1)(b) of our Constitution permits only those who have attained 18 years to be registered as electors.

I have touched on the evidence of three witnesses, Joseph Atkin, Casper Kaerongo and Martin Hodgers who claim to have been issued with free receipts by RB and told to vote for the Respondent. No satisfactory explanation has been given as to why these three witnesses should come to court and lie about this. Their evidence is significant because it is inconsistent with the explanation sought to be put by RB and IT that this was a fundraising scheme as opposed to an investment scheme. If it was a fundraising scheme then RB would not be issuing free receipts and telling people to vote for the Respondent. I note this was denied by RB and attempts were made to explain how those witnesses possibly could have acquired money to purchase their receipts.

Martin Hodgers in fact denied expressly being a supporter of the Respondent and yet he was given a free receipt. Again this is completely inconsistent with the suggestion that contributions were given only by supporters of the Respondent. If he was not a supporter then how did he get a receipt? The only explanation which he gave and which I find plausible as opposed to the evidence of RB is that it was issued to him pursuant to the promotion of a scheme towards securing support for the Respondent. No other explanation has been put forward for the acquisition of the receipt. In fact, the problem with the explanations of RB and IT is that if what they say is true, that there was no force, that they took time to explain clearly and well to everyone who came to their house, then, surely those who gave money would do so voluntarily and would have no cause to make up a story against such respectable persons as IT and RB.

It was suggested that there was no complaint received from any of those witnesses after the elections. However some of the witnesses did say that they are still waiting for the promise made to them by IT and RB to be fulfilled. One witness, Joseph Atkin in fact did say that he had been lied to by RB and was not happy about that. He also said that his mother was lied to and many other relatives were still waiting for the promises to be fulfilled. He also said that they did complain.

One of the submissions of learned Counsel Mr. Suri against the existence of such a scheme was the failure to prove the source of funding for such a scheme. There was in fact some evidence from witness Atkin that if no money came from the Respondent that it would come from the Japanese Embassy. John Matemono too gave evidence of what he heard from RB about money coming through from Japan, this was despite the denials of such sources of funding by the Respondent himself.

Despite the failure to establish the source of funding, what those witnesses relied on more were the promises that they would be paid monies if the Respondent won the election. It was contingent on the Respondent winning the election. In my respectful view that is crucial to the issue before this court. Were promises of financial reward made to those who contributed and were they invited to vote for the Respondent? Those who did give evidence told the court in no uncertain terms that it was an attractive scheme or arrangement and had jumped into it.

One of the matters pertinently pointed out by learned Counsel Mr. Nori and which I find to be consistent with the Petitioner's case was the stance taken by the Respondent throughout this proceedings; that he was never made aware of the fundraising activity sought to be carried out by RB and IT until negative questions were raised about it. The first time he claims he became aware of this was when a question was raised at Tatamba. He says that he then told those two men to explain and clarify to people what they were doing.

Respectfully it is quite strange and unusual, and therefore unlikely that the Respondent should not be made aware of this fundraising activity by RB and IT right from the start if indeed it was a mere fundraising drive. There was quite some preparation put into it and contacts made with several link persons, Amos Havi, Adrian Hachi, Moses Mahika, Dick Fafale and IT. The most logical thing one would expect in such circumstances is to tell him and let him know of what they were doing for him at those places. They would want to update him of the number of possible supporters he has in Nagolau and Kamaosi by specific reference to the receipts and the list of names compiled. Nothing of that appears to have been done. Even when he was informed he declined to be involved in what they were doing or to tell them expressly to stop what they were doing as it was damaging his clean campaign. Instead he chose to leave it to them to clarify the situation with those they had issued receipts to.

Respectfully I find an inherent contradiction in the case of the Respondent. The very persons that were regarded as their supporters turned out to be the very persons that have come to court to tell this court about what RB and IT had promised.

From the evidence of IT some thought obviously was put into the set up of this scheme. He said it was birthed amongst a number of friends that he had at Buala before campaigning began. The aim was to raise funds to help the Respondent in his campaign and to surprise him with it. If that was so, then sooner or later, the Respondent would have been given a full briefing about what they were doing. That was never done. Rather it was the Respondent himself who undertook to contact IT and RB and to tell them to clarify to the people what they were doing.

The evidence of Nelson Boderick too is consistent with the evidence that this was a scheme crafted by RB, IT and others with the intention of inducing voters to vote for the Respondent. His discovery of the lists running to about 8 pages and containing according to his estimate of about one thousand names too is consistent with such preparations and plan. He was led to believe according to his observations and what he was told that those lists were important documents. He himself held the list and searched for names of people included in the list from his village at Ligari.

There was some suggestion that this witness should not be believed because of what was termed as conducting a misleading trial by media. I do not take what he said in the media as significant. I note this witness was not shaken in cross-examination regarding his identification and recognition of the documents he saw at the room the Respondent was staying in at Honiara Hotel. The forms he identified were similar in appearance and format to the Exhibit identified as "I" but not including the writings at the top. His evidence too has not been controverted.

It is obvious either the witnesses for the Petitioner had committed perjury or it was IT and RB. In listening to their evidence, weighing their demeanours in court and assessing their evidence as best as I could, I have come to the conclusion that the Petitioner had established on the higher scale of the balance of probability that there was indeed a scheme perpetrated at Nagolau and Kamaosi by RB and IT.

The Law

Section 71 of the Electoral Act spells out the definition of bribery. I quote:

“(a) any person who directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector or to or for any person on behalf of any elector, or to or for any other person, in order to induce such elector to vote or to refrain from voting, or corruptly does any such act as aforesaid on account of any elector having voted or refrained from voting at any election;”

Section 70 of the same Act in turn includes bribery as a corrupt practice.

“Any person who is guilty of bribery, treating or undue influence shall be guilty of a corrupt practice....”

Does the scheme described by the Petitioner’s witnesses and perpetrated by RB and IT amount to or come within the description of a corrupt practice. The simple answer in my respectful view is yes. There were offers or promises of financial rewards made in return for contributions of money paid with the condition that these would be paid if the Respondent should win the election. The first issue raised therefore whether there was a corrupt or illegal practice committed must be answered in the affirmative.

The second issue raised too must be similarly answered, that it was committed for the purpose of promoting or procuring the election of the Respondent. There is sufficient evidence before me to show that this was the primary purpose under which the financial scheme was propagated. Voters were told to vote for the Respondent. Not only that, but inherent within the scheme promoted was the inducement that those promises were conditional upon the Respondent winning the election.

Have the corrupt or illegal practices committed so extensively prevailed that they may be reasonably supposed to have affected the results?

This is the third and crucial issue for determination by this court. If answered in the affirmative, the election of this Respondent must be nullified.

The words “extensively prevailed” simply mean in common parlance that something done was widespread. In this instance, whether the corrupt or illegal practices were done on a large scale or widespread basis. It is not confined to a geographical area. Something can be widespread within a village or an area.

Is there evidence to show that the corrupt practices were widespread or extensive in particular in Nagolau and Kamaosi?

The Petitioner’s evidence can be confined to his observations. At Ole on 23rd November 2001 he was given five receipts. These are exhibits 25, 26, 27, 28 and 20. The numbers of those receipts are D89, D90, D91, D92, and D93 respectively. These numbers are significant because in his evidence before this court, RB did concede that he had two receipt books, which he used, each containing 100 receipts. He also conceded in evidence that one book was used up whilst the other was partly used. He

estimated he used about 140 receipts in total. He told the court, he kept the names in a form but did not bring the form to court. I do not think any further evidence need to be produced to prove the extensiveness of this money scheme. The facts speak for themselves. From RB's evidence alone, we know that at least 140 receipts were issued. That is the barest minimum.

IT's admissions too is relevant as to the extent of the scheme. In his evidence in chief he says there were four sets of receipts, one went to Adrian Hati, one went to Amos Havi, the other set went to Moses Mahika and the last set used by him. The set he gave to Mose Mahika ended up with RB. This we know to consist of two receipt books. In cross-examination he told the court he received five receipt books from Rolly Bogese. We can safely infer from this that with each receipt book containing at least 100 receipts, that it brings the total number of receipts that could possibly be issued to five hundred. We know that the receipt book, which IT used, recorded a receipt number 64B. Although this was not issued by him he conceded it came from his receipt book. He also conceded that Dick Fafale had access to it and also issued receipts obviously with his knowledge and approval. This receipt was marked Exhibit 30. From this we know at least a total of 204 receipts (140 + 64) were issued. It is quite possible a lot more were issued, unfortunately the books and forms had not been produced by RB and IT.

According to the evidence of Nelson Boderick the list of names similar to Exhibit 6 and Exhibit I for identification contained names of people from the Gao / Bugotu Constituency running to about 8 pages. He was of the view that the total came to about 1000 names. However from IT's evidence that could not be so. It would be more like 400 or so names. The maximum number of receipts that could be issued would only have run to 500 names. We know that this number could not have been reached because according to RB's estimate of the receipts he issued, it came to only about 140.

Apart from his estimate of the number of names on the lists he saw, Boderick's evidence has not been controverted. He gave direct evidence of the list of voters from Gao/Bugotu Constituency in those 8 pages he sighted, though he was interested only in checking for names of people from his village, Ligari. He told the court he counted about three names of persons recorded from his village. This has not been challenged. This witness also identified the document marked Exhibit I as similar to the documents he saw minus the writings at the top. Counsel for the Respondent sought to tender that document but it was eventually decided to be relied on for identification purposes only because it was thought a witness from the Respondent's side would tender it in as an Exhibit. Unfortunately that was not done. Boderick did however confirm to the court that the documents he saw were similar in format to Exhibit I. His evidence has not been challenged.

The fact that the existence of the list of names (8 pages) he saw has not been challenged can only mean one thing. There were other receipts issued as well if not by RB or IT, by others who had receipt books. We know that Adrian Hachi and Amos Havi were also given receipt books. Since the receipts used by RB and IT contained the prefixes or suffixes D, E and B, it can be reasonably inferred in my respectful view, that the other two receipt books given to Hachi and Havi contained the letters A and C as their prefixes or suffixes. In fact when Exhibit I was shown to Boderick to identify he did note in his evidence some of the names contained therein were from Vulavu village. Also having sighted names of persons from Ligari village it is only reasonable to infer that there were receipts issued as well from either of those other two receipt books to voters residing in those areas.

The question as to whether the corrupt practice was extensive in Nagolau and Kamaosi can only be answered in the affirmative. There is also evidence to show that the extent of the scheme was broader than those two areas in that there were at least two other receipt books of 100 pages each which had been distributed and used. This would be consistent with the evidence of Boderick of his sighting 8 or so pages of list of persons issued with receipts and Exhibit I shown to him in court.

Taking into account the existence of those two other receipt books and taking into account the uncontroverted evidence of Boderick of the list of names he had sighted in room 463 at the Honiara Hotel, I am satisfied there is clear and cogent evidence which showed the number of persons issued with receipts was more than 204; in fact a reasonable inference can be arrived at as ranging from at least **between 204 and about 404**. The upper figure of 404 is reached by subtracting 96 (60 + 36) from 500. The figures 60 and 36 in turn are obtained by taking 140 from 200 in RB's case and 64 from 100 in IT's case. I note that Boderick had estimated the list of names to be about 1,000 but I think that could be an exaggeration bearing in mind that the number of receipt books conceded to have been issued and received were only five.

I have no doubt in my mind that there were more receipts issued than the 204 established in RB and IT's case in that there is clear evidence that there were names of other receipt holders recorded from Ligari and Vulavu but which were not included in the names of persons given receipts it appears from IT or RB. Their activities were confined primarily to Nagolau and Kamaosi. The evidence of Boderick in relation to Exhibit "I" and his own observations in respect of the list of names sighted by him confirms this. There is clear evidence before this court that there were two other receipt books which had been issued and intended to be used for exactly the same purpose as those receipts used by RB and IT. It is reasonable in my respectful view to infer from that, that those receipts were used for the same purpose. They were part and parcel of the same scheme concocted together from the beginning and issued together.

Whether the corrupt practices may be reasonably supposed to have affected the results?

This is the crucial and determining issue in this petition. The question I am required to consider is not whether it has been established as a fact that the results have been affected **but whether they can be reasonably supposed to have been affected**. The word "supposed" is not the same as believe. In the Australian Little Oxford Dictionary it is defined inter alia as "*assume, be inclined to think; take as possibility or hypothesis; require as condition*". The Oxford Advanced Learner's Dictionary of Current English define it as: "*let it be thought that; take it as a fact; guess; think; require as a condition; imply...*"

If it can be reasonably supposed that the results have been affected that will be sufficient. All that is required to be shown is that there is reasonable basis for making the supposition ~~that~~ the results have been affected.

Counsel Nori cited a case from Vanuatu *Nikenike Vulobaravu v. Josias Moli* (Supreme Court of Vanuatu) Civil Case number 28 of 1998, in which he sought to submit that it was not necessary for this court to determine the number of persons who had been issued with receipts. As long as it had been proved to the satisfaction of the court on clear and cogent evidence that bribery had been committed, on a large scale it was sufficient to nullify the election of the Respondent. He sought to submit that in the above case, a list of names were read out but once it was determined that bribery had been established it was sufficient. That case however is distinguishable in that the allegation of bribery was made directly against the Respondent in that case. That was not the case here. It is made simply against his supporters. To that extent, the requirement is still relevant.

There has been evidence adduced that IT went around around clarifying what he was doing before the actual election day. None of the witnesses called however confirmed having been told by him that what he was doing was a mere fundraising activity. The same goes with RB. None of the witnesses who gave evidence were ever re-visited by him and told that what he previously told them was not true. None of these two witnesses returned their money as well. In fact RB told the court that he did not consider it was necessary for him to correct anything as he had thoroughly explained to everyone that came to his house what the situation was. He told the court that when the Respondent approached him about what Joseph Bogese had raised during his campaign at Nagolau he told ~~him~~ ^{him} that everything

was alright. He said he never held any other meeting. One of the reasons why he did not hold meetings he said was because the atmosphere was quite tense. However that did not prevent him from visiting those people in their homes he had previously spoken to and clarifying the situation with them.

It is also significant that despite being told by the Respondent that what he was doing could tarnish his clean campaign after the meeting held at Nagolau on 21st November 2001, one would have expected RB to respond to this by stopping to issue receipts. The evidence is very clear and damaging. He continued to issue receipts after and continued to make promises to people. Casper Kaerongo's receipt was issued on 22nd November, Ben Ngaraghi on 23rd November, Margaret Matemono on 25th November, Misael Havi and Georgina Havi both on 30th November and Martin Hodgers on 3rd December. No wonder people were confused. Whilst on one hand the Respondent was saying that there was no funding from the Japanese Embassy and despite denying involvement with what RB was doing, RB was continuing to issue receipts on the basis of the promises of financial reward being given if the Respondent should win the election. Martin Hodgers was not present at Hughie Bogese's house. One would have expected IT to tell Tavake to go and see RB and to tell him to re-visit all the persons he had issued receipts to and clarify the position with them or hold meetings or to tell him not to issue receipts.

In fact it is significant too that the Respondent himself did not tell RB to stop issuing receipts after his campaign at Nagolau on 21st November, preferring instead to allow RB to sort out things himself. He was already aware of the seriousness of the rumours as raised at Tatamba and at Nagolau and yet did not take active steps to stop the confusion or rumours from continuing to be fanned by RB.

IT too gave clear evidence that he became aware of the rumours from 22nd November 2001. He was in fact told off he says. On 24th November he was again reminded about it. From then on he says he went around clarifying the situation. The difference thereafter he says, was that he did not make any more appeals. However this has been clearly contradicted by the existence and issue of a receipt dated 2nd December 2001 identified by him as having been issued by Dick Fafale. This is Exhibit 30. No reasonable explanation has been offered for the existence of this receipt. In fact, in his evidence in chief, he told the court that the receipt book, which he had was later taken by Dick Fafale and used. That could only have happened according to receipt number 64B after 25th November 2001, because on said date this witness told the court he took his receipt book with him and his form and went to see Jason Gilo on said date. On 28th November he went to Bulavu, explained and showed the form and receipt to those who were present. From that date onwards no appeals were made, which meant if he was correct, that no receipt ought to have been issued and the receipt book ought not to have been taken over by Dick Fafale to be used. His own evidence suffers from an inherent inconsistency.

Another witness Thomas Tavake was called to show that he did hold a meeting at Nagolau on 3rd December to explain what the situation was regarding the receipts. This witness did say that he held a meeting in Hughie's place to clarify the situation regarding the receipts in which Amelia Teko was present. When he was asked in chief what he told those present at the meeting, he simply said that he told them about the fundraising activity that was being done. In cross-examination he confirmed that was all that he did. He said he did not tell them anything else. He denied talking to them about the rumours that were spread.

It is significant that when he went to Nagolau he was never told to go and see RB, the man behind all the so-called rumours spread at Nagolau. One would have expected him to go and see him and talk to him about clarifying the situation and working with RB to sort things out there. Further, apart from that one meeting, there was no suggestion that he ever held any other meeting with any of the other witnesses called by the Petitioner, to clarify the position with them. There has also been no suggestion that any refunds were offered.

Has it been shown that the meetings held by IT sufficient to dispel the rumours and confusions? In my respectful view, that must be answered in the negative. The evidence adduced by him does not support such conclusion. The example of the meeting held by Tavake at Nagolau and the continued issue of receipts after he was aware of the so-called rumours contradict his claims. Exhibit 30 had been given to the Petitioner by one of the receipt holders.

What about the awareness campaign undertaken by the Respondent to dispel rumours regarding fundings from the Japanese Embassy? From the evidence adduced before this court, it is clear that there were two separate issues, the rumours about funding from the Japanese Embassy and the financial scheme operated by RB and IT. The Respondent did not take upon himself to comment on what RB and IT were doing. He left it to them to clarify the confusion they had created themselves. They were not as far as he was concerned connected but if they were, he felt he had dis-associated himself sufficiently from them. Unfortunately, that was not sufficient to stop the rumours from continuing to be perpetrated by IT and RB.

Decision

The Respondent won by a margin of 198 voters. The number of receipts proven to have been issued came to at least 204. Of those, we know at least four of the witnesses called indicated that they may not have voted for the Respondent despite being issued with receipts. Rebecca Rebi and Casper Kaerongo says they were not influenced by the issue of receipts. Clearance Silverio did not vote and Mishael Havi's vote was subsequently disqualified on the grounds that he had not reached the age for voting. If their votes are discounted, that still leaves 199 votes yet to be accounted for, one more above 198.

It was suggested by Counsel Keniapisia that the only way to determine accurately who has voted for the Respondent is to require all the receipt holders to be identified and have their ballots checked. Unfortunately, before that can be done, it would mean having all their votes declared void. To do that, it would mean requiring all the lists of names and receipt books issued, to be brought to court for purposes of identifying all those who had been issued with receipts. That would have been unnecessary in any event because we already know that the minimum list of persons issued with receipts was 204. That would have been a fruitless exercise for the Respondent because his election would then have been annulled forthwith.

The barest minimum from the evidence was 204. Even if it was only 199 receipt holders, bearing in mind that this is a secret ballot, is it unreasonable to suppose that all those persons could possibly cast their votes in favour of the Respondent?

The evidence adduced however showed that there were more than 204 receipts issued. It was more than 204 but not more than 400. In my respectful view, that figure is more than sufficient to affect the results of the election and that it may be reasonably supposed to have affected the results of the election. His election is hereby declared void. I will so certify to his Excellency the Governor General of Solomon Islands.

THE COURT

**IN THE HIGH COURT OF
SOLOMON ISLANDS**

Civil Case No. 009 of 2002

Civil Jurisdiction

IN THE MATTER of Section 82 and 85 of the National
Parliament (Electoral Provisions) Act [Cap. 87]

IN THE MATTER of the Election Petition Rules 1976

BETWEEN: **WILLIAM GIGINI** Petitioner

AND: **ERIC NOTERE** Respondent

ORDERS OF THE COURT

[The National Parliament (Electoral Provisions) Act – Section 66 (2)]

HAVING delivered judgment in the Election Petition of William Gigini this 6th day of
June 2002

AND it having been determined that the election of **ERIC NOTERE** as the elected
member of the National Parliament for Gao/Bugotu Electoral Constituency in the
General Election held on 5th December 2001 was void

IT is hereby ordered that:

1. The election of **ERIC NOTERE** is void, and
2. Consequentially he is hereby disqualified for election as a member of the National
Parliament for a period commencing on the date of judgment herewith to the date
of dissolution of the National Parliament following this judgment.

Dated this 6th day of June 2002

THE COURT