

## Fasi v. Pohiva (No. 2)

Court of Appeal  
Roper, Morling and Cooke, JJ  
Appeal No. 10/1990

5, 14 September 1990

### 10 *Elections – bribery – meaning of term*

The appellant filed an election petition claiming that the respondent was guilty of bribery in that he paid back some of his parliamentary salary and allowances and requested that some be used for educational scholarships. The Supreme Court held that this conduct did not amount to bribery as defined in the Electoral Act 1989.

### HELD

20 Affirming the decision of the Supreme Court the conduct of the respondent in returning part of his parliamentary salary and allowances, whether for educational scholarships or otherwise, and his conduct in publicly commenting on this, did not amount to bribery as defined by section 21 Electoral Act 1989.

*Statutes considered:* Electoral Act 1989, section 21

Counsel for the appellant : Mr W. C. Edwards  
30 Counsel for the respondent : Dr R. E. Harrison

### Judgment

The Respondent was a candidate for the district of Tongatapu at the general election held on 15 February 1990 and was elected people's representative No. 1 for that district. The Appellant was a registered voter at the election. He filed a petition seeking declarations that the Respondent was guilty of bribery, corrupt and illegal practices and threatening voters in the election.

The petition was heard by Martin C. J. He found that no ground had been established upon which the Respondent's election should be declared null and void  
40 and accordingly dismissed the petition. From that decision the Appellant appeals to this Court.

The only allegation pursued on the hearing of the appeal was that related to bribery. The facts relied upon by the Appellant to support this allegation are set out with great particularity in the learned Chief Justice's judgment. It is sufficient for us to refer to them in the briefest detail. The Respondent has been a member of parliament since 1987. Since at least 1986 he has frequently and publicly criticized the salaries and allowances paid to parliamentarians, saying they are too high. Since  
50 his election in 1987 he has not taken the whole of his entitlements to salary and

allowances. By one mean or another (the details of which are not important for present purposes) the Respondent ensured that he did not derive personal benefit from the whole of his entitlements. He requested that part of his 1987 entitlements be paid to the Ministry of Education for scholarships, and this was done. And he refunded to the government part of his 1988 and 1989 entitlements.

During the course of the 1990 election campaign certain publicity was given to the fact that the Respondent had not accepted the whole of his past parliamentary entitlements but there were also rumours that he had later claimed them. The Respondent claimed that any publicity he gave to his refusal to accept entitlements was to refute these rumours. The Appellant alleged that the Respondent took active steps to ensure that this publicity occurred. He further alleged that this publicity showed that the times when the allowances were not taken or refunded the Respondent intended to use them to his advantage in the subsequent election.

After a lengthy hearing Martin C. J. found that the evidence fell far short of what was required to establish bribery. After a meticulous examination of the evidence he found that the Respondent's primary intention in refunding part of his salary and allowances, whether for scholarships or simply into general revenue, was "to act and to be seen to act consistently with his public statements about parliamentary allowances." He therefore dismissed the allegation of bribery.

Section 21 of the Electoral Act 1989 provides, relevantly, as follows:

"21(1) Every person commits the offence of bribery who, directly or indirectly ...;

- (a) gives any money... to or for any elector... or to or for any other person, in order to induce any elector to vote or refrain from voting;
- (2)... a reference to giving money... includes a reference to ... promising ... any money...".

In our opinion Martin C. J. was manifestly entitled to conclude, as he did, that the requirements of section 21 were not made out. Indeed, we would have been surprised had he come to any other conclusion. It would be extraordinary if a candidate for election to parliament could not, without fear of being accused of bribery, make reference to his views on the scale of parliamentary allowances and his own conduct in respect of them. We find no error in Martin C. J.'s reasons and the appeal is therefore dismissed.

It is unnecessary for us to deal with a submission put to us, and to Martin C. J. that, as a matter of law, the money repaid to the government and the money paid to the Ministry of Education at the Respondent's request could not amount to bribes within the meaning of section 21. It was submitted that when the Act refers to a gift "... to or for any elector... or to or for any other person..." it refers to some particular elector or electors or other person, and that in the present case the gifts were made to the government and not to an elector or person. It was also submitted that the words "... in order to induce any elector to vote..." refer to some particular elector or electors, and that no such elector had been identified. Martin C. J. ruled against these submissions. We think they may have substance but we do not need to rule upon them.

The appeal is dismissed with costs. At this appeal was of considerable importance to the Respondent and as his career in parliament depended on its outcome, we indicate our view that it was reasonable for him to retain overseas  
100 counsel, as indeed the Appellant did.