

Representation of the People Act No. 13 of 1982

Part 14

Election Petition:

IATIKA LOUIS, Petition to declare void the election
of Jean-Marie LEYE in the Tanna By-Election.

Coram: The Honourable the Chief Justice, Mr. F.G. COOKE.
Miss Dominique Toulet, Interpreter.
Miss V. Millett, Ass. Registrar.

JUDGMENT

On the 2nd of September 1982, a By-Election was held for one seat in the Tanna Constituency and Jean-Marie Leye was declared by the Electoral Commission elected to Parliament for the vacant seat in Tanna Constituency.

A notice to this effect appeared in the Government Gazette No. 31 of the 13th September 1982.

Under the Representation of the People Act No 13 of 1982 (herein after referred to as 'the Act') section 50 (1) the validity of any election to Parliament may be questioned by a petition brought for that purpose.

Under section 51, an election petition may be presented by one or more of the following:-

- (a) a person who is registered to vote at the election to which the petition relates.
- (b) a person claiming himself to have been a candidate at such election.

Therefore by virtue of section 51 of the Act, Iatika Louis, a candidate (herein after called 'the petitioner') of the VANUAAKU Party petitioned the Supreme Court on the grounds set out in the petition attached.

At the end of his petition, the petitioner asked the Supreme Court in exercise of its powers given by section 51(1) (a) of the Act to declare the election of Mr. Jean-Marie Leye as void, or alternatively that the persons who have contravened the law be dealt with in accordance with the provisions of section 46 (3) of the Act.

The evidence for the petitioner was that he saw the poster of Jean-Marie Leye (herein after called Mr. Leye) was close to where people voted at Greenhill polling station about 10 metres away. He said there were 3 posters and that the other two were closer. Further that Charlie Nako an M.P. was in the polling station wearing a T. shirt of the Nagriamel Party which he said was united with Mr. Leye's Party.

was That at Enui there/another poster of Mr. Leye about 12 metres from the station and that at Lamanruan there was another poster at the door of the polling station of Mr. Leye.

In cross examination he stated he visited only Greenhill, Enui, Middle Bush and Lamarsasan. That he did not see any posters with his photo there. Due to trouble with his truck he was unable to visit all the polling stations. He stated in reply to a question by Mr. Boulekone that he only heard that Nagriamel Party was attached to the Union of Moderate Party. It was a rumour. He thought Charlie Nako wearing the T-shirt was against the rules.

Then there was the evidence of John Laughman an M.P. He said he saw a big poster of Mr. Leye on a notice board at Middle Bush attached to the rules for those voting about 30 yards from the polling station. He said there was a small photo of the petitioner on the rules also. That then he went to Greenhill polling station where he saw a poster of Mr. Leye with a small photo of the petitioner and Mr. Leye in local polling instructions; also at Greenhill voting station he saw Charlie Nako with T-shirt of Nagriamel.

Also at Enui he saw a big poster of Mr. Leye near the door of the polling station. That he only stayed at the polling station for a short period of 10 to 15 minutes. He said he did ask who put the posters there and was informed that a boy Ianiap put them there.

He mentioned that he was at Iulmet polling station when a query was raised as to the boys age - it seems that the age on the roll and card differed and that he said a person should vote if he had a card. He said he did not see exhibit 1 at Iulmet (this was a photograph of four Vanuaku election candidates.

George Ikolio also said he saw a photo of Mr. Leye at Greenhill polling station - he also saw a small photo of the petitioner there.

He confirmed that Charlie Nako was inside the polling station wearing a T-shirt of Nagrimel. He did not know very much about Nagriamel and that it did not join the opposition United Moderates Party.

In cross examination he said there was a photo of the petitioner close to the polling station, it was about 1 foot by 6 inches wide.

I am not sure whether this witness was mistaken but his evidence was clearly stated but he is the only witness who mentioned a large photo of the petitioner.

Joel Nokout said he saw a photo of Mr. Leye at Enui village polling station but that he did not see any small photos of anyone. This witness was quite confused and contradicted himself. He changed his evidence at least twice and I just could not believe what he said. First he said he saw photos of the petitioner on a truck which passed the polling station into the yard there - Later he retracted the statement.

Kai Pattison whose evidence impressed me stated he visited three polling stations, firstly Middle Bush at about 10 am when he saw a poster of Mr. Leye. That as a result of his request to the officials at the booth the photo was taken away. He then went to Lamanaruén at 11 am where he saw another poster of Mr. Leye and had it removed and asked that a reference to such be made in the report.

I have seen the report of the returning officer and no mention is made of such. Then he went to Luanapén at 1 pm and saw another photo of Mr. Leye and had that taken away too.

Mr. Puyo Festa another witness gave his evidence in a precise and clear manner, that at Middle Bush he noticed a photo of Mr. Leye on a poster with voting rules, that as a result of his request the photo was removed. That the same thing happened at Lamanaruén and Lanuapén all photos were removed at his request.

Marcel Sanga gave evidence of seeing a poster at Middle Bush of Mr. Leye which he had removed at 10 am.

Dickson Kohua mentioned that he saw a boy at Laukatai with some voting cards - he could not say how many but he did mention that he could be holding proxy cards. He denied that he heard the boy say "vote for Mr. Leye."

Another witness Iata Sanaika stated he saw someone called Willie Inalia wear a T-shirt with the letters U.C.N.H. on the back. He could not say what the letters represented. He said it was a moderate party T-shirt but I have no evidence before me that such is the case. He stated that he did not see a boy NIKO handing out voting cards.

Iata Tuan confirmed that he saw a person with a T-shirt with U.C.N.H. on the back; that the person only came to vote and went away.

Finally there was evidence of Mr. Misiwaren who said he saw photo of Mr. Leye at Luanapén, it was about 8 am.

It was on a mango tree some distance from the polling booth. The evidence therefore is that there was some posters of Mr. Leye at Middle Bush, Greenhill, Enui and Lamanruén and Lamanupén polling stations. Certainly at Middle Bush, Lamanruén and Lamanupén the posters were removed at the request of Mr. Festa.

How long the photos remained at the other places I cannot say as no evidence was forthcoming.

The defence was that there were also photos of the petitioner at the polling booth. This was not denied so I must accept it as evidence. I accept the fact that there were photos of both candidates at least at some of the booths.

I have seen the reports of the returning officer which I took judicial notice of as they are official reports. The only two voting booths of which reports were made was Middle Bush and Enui polling stations. As the poster was taken down from Middle Bush at the request of Mr. Festa and the report of Enui village polling booth was mentioned by Joel Nokout a witness whose evidence I could not believe as he contradicted himself.

I am satisfied that the appearance of photos of both candidates at polling stations did not effect the voting at those stations, photos are allowed within 100 metres of a station and returning officers should be careful in future to see that such are not on view during polling hours as they may influence a voter. I say may because I have no evidence before me that they have in fact done so.

The other complaint in the petition was that a person named Niko Tad was alleged to have handed out election cards and at the same time was heard to instruct each voter in Tanna language to vote for 'Jean-Marie Leye'. There was no evidence whatsoever from any witness to substantiate such and I accordingly rejected that ground.

word The final complaint was that Charlie Nako wore a T-shirt with Nagriamel on it - Charlie Nako himself said the 'development' was on the back of the T-shirt and in front the Nagriamel flag. He said he was the authorised agent of Mr. Leye.

Whether wearing such a T-shirt in the polling station really influenced the voters I have great doubts. Charlie Nako was the M.P. for the area and was known by every one there. It is my opinion that the wearing of a T-shirt, no matter what was written would not have effected the voting because he was so well known in that area.

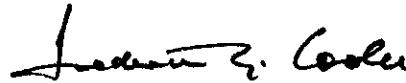
I have considered the submission of both the petitioner and Mr. Leye and Mr. Boulekone.

I am of the firm belief that whatever irregularity that happened as the result of posters of both candidates and I am satisfied there were some of each, possibly more of Jean-Marie Leye, it has not been proved to my satisfaction that their appearance at voting stations affected the result of the election.

I am further satisfied that the election was conducted in accordance with the principles laid down in the Act.

I therefore dismiss the petition and declare the Jean-Marie Leye was duly elected to Parliament for the vacant Tanna seat.

Dated the 22nd of October 1982.



FREDERICK G. COOKE

Chief Justice.

In the petition I was asked as an alternative to have the persons who contravened the law be dealt with in accordance with the provisions of section 46 (3) of the Act.

This is a matter for anyone who considers an offence under section 46 (3) has been committed to lay a complaint with the Police. It is only where there has been corrupt practice can I interfere under section 60 of the Act.

May I wish both parties good luck in the future and that all persons in Tanna will live in peace and harmony together.