

HIGH COURT. 1961. 24, February; 9, March. MARSACK C.J.

Petition - seeking declaration voiding election of member - whether "irregularity" under contrary to Western Samoa Legislative Assembly Regulations 1957, Regulation 87.

In the absence of an express or implied intention of the Legislature and though not necessarily an exhaustive definition, the word "irregularity" in Regulation 87 of the Western Samoa Legislative Assembly Regulations 1957 must be construed to mean, in addition to the specific matters defined in the regulation themselves, any transgression of the law by or on behalf of the successful candidate, or wrongful act or omission on the part of any officer of the Government concerned with the conduct of the election, whereby the result of the election was materially affected.

Election declared void.

PETITION praying election of a member of the Legislative Assembly be declared void.

Phillips, for petitioner.
Other parties not represented.

Cur. adv. vult.

MARSACK C.J.: This is a petition by Tuioti Siaosi and nine other electors of the electoral district known as Fa'asaleleaga No. 1 praying that the election of Magele Ate as a member of the Assembly may be declared void. Appended to the petition is a document bearing the signatures of 123 electors for the constituency in question, supporting the petition.

The petition is based on the ground that the intended nomination of Tuioti Siaosi was rendered inoperative by the failure of Gatoloai Peseta, an officer of the Government connected with the Legislative Department, to lodge the necessary papers with the Returning Officer before the close of nominations; and further that this was an irregularity, as defined in Regulations 87 of the Western Samoa Legislative Assembly Regulations 1957, which materially affected the result of the election.

Neither the successful candidate Magele Ate nor Gatoloai Peseta was present at the hearing of the petition. During the course of the hearing an invitation was extended to any persons having an interest to come forward, and to examine the witnesses called for the petitioner. No person came forward.

The evidence establishes the following facts. At meetings held in the electorate in November and December 1960 Tuioti Siaosi was proposed by a number of the matais as a candidate for the election. Late in December the name of Magele Ate was also put forward. Nominations were due to close at 4.00 p.m. on Wednesday 4th January 1961. On Monday 2nd January there was a meeting in Fa'asaleleaga of the matais of Lalomalava, Safua and Vaisa'ulu at which the candidature of Tuioti was discussed; it was decided to raise the nomination fee of £10 and to send this, with the nomination paper, to Apia the following day. Gatoloai Peseta was present at the meeting, and he assured the matais there present that he was going to Apia next morning, and if the nomination fee were handed to him he would be able to do all that was required without the presence in Apia of the candidate Tuioti in person, as he was working with Mr Clare the Returning Officer. One of the persons at the meeting, La'ulu, asked if it would be necessary to have any forms filled in or papers completed; to which Gatoloai replied that he would be able to attend to everything at Mulinu'u

the following day. Tuioti was not at that meeting, but later in the evening he called on Gateloai in company with Afoa Samata to thank him for his offer to see to all things necessary in connection with Tuioti's nomination. The latter then handed Gateloai a cheque for £40 to cover the nomination fee, and further gave him £2 in cash to cover travelling and other unspecified expenses. It was not known to Tuioti that the pulenu'u of Lalomalava had a supply of nomination forms. Gateloai took no steps on the 3rd January, but on the 4th, the day upon which nominations closed, he went in the morning to the office of the Returning Officer at Mulinu'u and enquired about nominations for the electoral district of Fa'asaleleaga No. 4, for which Gateloai himself was a candidate. It was not until 3 o'clock that afternoon that he did anything with regard to the nomination of Tuioti. He then handed over the cheque for £40 to the Deputy Returning Officer, Tamaseu. Tamaseu asked for a signed nomination form. Gateloai Peseta replied that he did not have one, but that he would send a message to Tuioti to come the following day. That message was received by Tuioti, through Radio Station 2AP, about 8 o'clock on the night of 4th January, after nominations were closed.

Tuioti came to Mulinu'u the following day, 5th January and had a nomination form signed and lodged with the Returning Officer, Mr Clare. Mr Clare rejected this, and according to the evidence informed Tuioti that he had "missed the bus".

In the result the only nomination received by the closing time on 4th January was that of Magele Ate, who was accordingly declared elected.

The electoral roll for the constituency of Fa'asaleleaga No. 4 contains 206 names. The supporters of Tuioti Siasoi, evidenced by their signatures either to the petition or to the document which accompanies it, total 123. There is a strong likelihood, therefore, that the result of the election has been materially affected by the fact that Tuioti Siasoi's nomination paper was not lodged within the time laid down.

Accordingly the only question for the Court to determine is whether the facts which I have found disclose an "irregularity" within the meaning of Regulation 87. I have been unable to find any helpful authority as to the meaning to be attributed to that word in this connection, and counsel for the petitioner did not refer me to any.

Express provisions of the Western Samoa Legislative Assembly Regulations cover many of the grounds which, under the statutes governing the conduct of elections in countries where elections have long been part of the life of the community, have in those countries formed the basis of petitions asking that elections be set aside. Such are: definite and specified acts of misconduct on the part of electoral officers (Regulation 75); corrupt practice and bribery (Regulations 76, 77); treating by or on behalf of the candidate (Regulation 78); and undue influence (Regulation 79).

If the intention of the Legislature had been that the word "irregularity" in Regulation 87 should be limited to those breaches and transgressions of the law which are set out in detail in the Regulations, then it would have been easy to say so. As this intention is not expressed or implied, the use of the word "irregularity" as it appears in Regulation 87 leads one to the inference that the regulation is intended to have a much wider scope. Obviously it cannot be intended to cover every act or thing not in conformity with rule or principle, by which the result of an election may have been materially affected. I think it is necessary to keep in mind what was obviously the intention of the Legislature in introducing a new electoral system into the country of Western Samoa, that is to say to ensure that elections should be conducted substantially in accordance with the existing election law. The late lodgment of a nomination paper could no doubt be regarded, in some sense of the term, as an irregularity; but if the candidate were in any way to blame for his failure

to effect the nomination in time, then quite clearly he could not plead an "irregularity" under Regulation 87.

In my opinion the word "irregularity" in the regulation must be construed to mean, in addition to the specific matters defined in the regulations themselves, any transgression of the law by or on behalf of the successful candidate, or wrongful act or omission on the part of any officer of the Government concerned with the conduct of the election, whereby the result of the election was materially affected. This definition is not necessarily exhaustive.

There is no suggestion of any wrongful act or transgression on the part of the successful candidate Magele Ate. The wrongful act or omission alleged by petitioner is that of Gatoloai Peseta, in promising to see that Tuioti Siasosi was effectively nominated and, by his neglect, failing to do so.

The question then arises as to whether the position of Gatoloai Peseta could be regarded as an official one on behalf of the Government in connection with the election. There is no doubt, on the evidence, that he held himself out as such. It was well known to all the matais supporting Tuioti that Gatoloai had held important positions under Government and was actually employed as a Government servant at the time. Unfortunately the Court was not informed with any accuracy as to what was the exact position he held at material times. As to the nature of his employment with the Returning Officer we have only his statement at the meeting of the matais, reported by witnesses who were present. Without definite evidence on this point the Court is placed in a considerable difficulty.

It is clear, however, that Gatoloai Peseta was in the first week of January an employee of the Government of Western Samoa. He was known and respected in the district as a person of high standing. The electors and the candidate Tuioti Siasosi accepted without question his statement that he was employed with the Returning Officer and that he would see that the nomination of Tuioti was entered in due and proper form. In fact, if he had gone to the Mulinu'u office on the day of his arrival in Apia on 3rd January, instead of waiting until closing day the 4th January, the nomination could, and no doubt would, have been lodged in time. I cannot find that either Tuioti or the electors supporting him were negligent in relying on the promise of an officer of the Government of the standing of Gatoloai Peseta, to attend to the nomination. In view of the very wide meaning which may be given to the word "irregularity" in Regulation 87 I think I am justified in holding that the circumstances detailed in this judgment disclosed an "irregularity" within the meaning of the regulation.

As I have said, I think that the regulation was so framed in order to ensure that no mere technicality should result in the election of a member of the Legislative Assembly otherwise than in accordance with the wishes of a majority of his constituents; that no elector should be prevented, by any act either of a candidate or of an officer of the Government, from freely expressing his opinion at the ballot. If the election of Magele Ate in this case is set aside, the matter will be referred back to the electors of Fa'asaleleaga No. 1 to express their preference in the matter of the selection of their representatives. No injustice would therefore be done, but the object of the legislation would be achieved; that is to say the election of a candidate who has the support of the majority of the electors.

The finding of the Court is accordingly that there has been an irregularity which has materially affected the result of the election. The election of Magele Ate as a member for the Samoan constituency of Fa'asaleleaga No. 1 is accordingly declared void.

After payment thereof of Court costs £4 the balance of the £10 deposit will be returned to petitioner. There will be no other order as to costs.