

HIGH COURT. 1961. 3, 10, March. MARSACK C.J.

Petition to have election declared void - irregularities materially affecting result - evidence - proof.

To upset an election on the uncorroborated testimony of one witness as to what happened in the presence of a number of persons, would require cogent and credible evidence fully substantiating any charge of irregularities materially affecting the result of such election.

Petition dismissed.

PETITION to have election declared void.

Phillips, for petitioner.
Metcalf, for respondent.

Cur. adv. vult.

MARSACK C.J.: This is a petition to have the election for the Samoan constituency of Palauli East declared void under Regulation 87 by reason of irregularities materially affecting the result of the election. The irregularities alleged are set out in clause 4 of the petition:

- (a) a direction given by a leading orator of Vaito'omuli, Seumanufagai, on 29th January to the matais of that village that if Afoafouvale Misimoa were not successful at the election, the matais of Vaito'omuli would on the following day be subjected to a death oath (tautoga oti);
- (b) a statement made on 3rd February to a meeting of matais of Vaito'omuli that if Afoafouvale Misimoa were unsuccessful a death oath would be taken, and all matais found not to have voted for Afoafouvale Misimoa would with their children and grandchildren be expelled from the village.

A third ground based on allegations as to interference with electors on polling day, 4th February, was abandoned at the hearing.

At the conclusion of the case for the petitioners Mr Metcalfe submitted that there was no case to answer, and that the evidence of the petitioners presented to the Court was insufficient as it stood to justify the making of an order avoiding the election.

Two witnesses only were called for petitioners; Tualaulelei Mauri, the unsuccessful candidate for Palauli East, and Niupulusu Fui a matai of Vaito'omuli.

The electorate of Palauli East consists of three villages, Vailoa, Vaito'omuli and Faaala. Mr Phillips said in the course of his address that Tualaulelei's village, Vailoa, with 41 electors, could be expected to vote unanimously, or nearly so, for Tualaulelei; Afoafouvale's village Faaala, with 24 and Vaito'omuli, with 24, mostly for Afoafouvale. This seems a fair inference from the evidence, though Tualaulelei deposed that he hoped to pick up a few votes in Vaito'omuli and even in Faaala. In the result Afoafouvale received 46 votes, Tualaulelei 42.

Tualaulelei in the box had nothing to say about the alleged events of 29 January and 3rd February, as he was not present at the meetings concerned. The only portion of his evidence directly referable to the charges brought in the petition is that dealing with the Samoa rite known as tautoga oti. He states that this is a ceremony of the deepest gravity, resorted to only in

extreme cases to solve problems which would otherwise be insoluble. It is instituted, he says, for the purpose of frightening a culprit into avowing his guilt. The person in a village who has the power to order a tautoga oti is the tu'ua or senior orator; and in Tualaualelei's opinion the tu'ua of Vaito'omuli is Seumanufagai. Tualaualelei admits that the standing of Fiso in the fa'alupega of the village is exactly the same as that of Seumanufagai, but as the latter is older in years his wishes, in the case of his insistence, would be carried out even against the opposition of Fiso and the disapproval of other matais. Tualaualelei however agrees that the rite is one of extreme rarity. He himself has never seen one, and has heard only of one, performed some seven or eight years ago. When asked for details, however, he disclosed that this was not a village ceremony at all, and was not ordered by a tu'ua. It was carried out at the Samoan Affairs office, under the directions of the European Head of the Department. Consequently the witness was unable to give the Court any instance of a tautoga oti in a Samoan village which he had heard of in the whole of his lifetime.

As to the threat of expulsion from the village, Tualaualelei agreed that this would be ineffective without the institution of a tautoga oti, as otherwise there would be no means of finding out for which candidate any particular elector had voted.

The only witness as to exactly what took place at the meetings of 29th January and 3rd February is thus Niupulusu Fui. It must be stated at once that Niupulusu was not a convincing witness and there are many discrepancies in his evidence.

As to the meeting on 29th January, all that he says is this:

"Seumanufagai said that no one should vote for any other than Afoafouvale Misimoa. Nothing else was said. None of the rest of us made any comment".

This evidence falls far short of proving the allegation contained in paragraph 4(a) and it must be held therefore that that ground has not been established.

As to the meeting held on 3rd February, Niupulusu says that Seumanufagai proposed a tautoga oti but was stopped by Fiso. According to witness, Seumanufagai also put forward the suggestion that any person voting against Afoafouvale Misimoa should with his family be expelled from the village. Niupulusu then proceeds to make the incomprehensible assertion that he disapproved of Seumanufagai's suggestion, and showed his disapproval and his anger by expressing agreement with it. In his opinion, he says the other matais and in particular the younger matais at the meeting would be afraid of the threat of expulsion from the village, though he acknowledges that an order of expulsion could be made only by the joint resolution of a number of matais, including Fiso and himself, and not by Seumanufagai alone.

Niupulusu said in evidence that it would be quite wrong to expel anyone from the village in the circumstances, but that he did not say so at the meeting; and though pressed by counsel to say why he had kept quiet, he could not or would not in the box give any reason for his silence. He deposes that when Seumanufagai spoke of the tautoga oti and the expulsion, Niupulusu said to him at once, "That's enough". That was meant, the witness says, to indicate that he objected to the proposal put forward by Seumanufagai.

On this evidence it is difficult to understand how the other matais at the meeting came to be afraid of what Seumanufagai had said.

Niupulusu further states that four matais of Vaito'omuli had told him, before the election, that they favoured Tualaualelei. They may well, in fact have voted for Tualaualelei; it is clear from the figures that even if every one of the forty-one electors of Vailoa voted for Tualaualelei - and this is not necessarily so - at least one person of Faaala or Vaito'omuli voted for Tualaualelei and not Afoafouvale. But a pre-election statement of that sort an elector cannot be held to indicate a firm and unalterable intention to vote for the candidate named.

The Court is thus invited by petitioners to hold, on the unsupported evidence of Niupulusu Fui as to what took place at the meeting on 3rd February, that an irregularity materially affecting the result of the election has been proved and that the election should on that ground be set aside. It is worthy of comment that though several persons were present at the meeting no other than Niupulusu has been called to give evidence. To upset an election on the uncorroborated testimony of one man as to what happened in the presence of a number, would require a cogent and credible story fully substantiating the charges brought. That is not the case here. The evidence of Niupulu was, as I have said, unimpressive, and far too weak to form the foundation of an order avoiding the election.

It is perhaps proper to state that nothing in the evidence of Tualaulelei and of Niupulusu has caused the members of the Court to modify in any way the opinion expressed as to tautoga oti in its judgment in the matter of the prosecution of Seumanufagai for alleged offences under the Legislative Assembly Regulations.

For these reasons I hold, with the full concurrence of the Samoan Judges, that petitioners have not made out a prima facie case for the avoidance of the election and it is not necessary to call on respondents. The petition will be dismissed.

Of the sum of £10 deposited with the Court, £4 will go to the costs of Court; £5.5.0 will be allowed to respondents by way of costs; and the balance of 15/- will be forfeited to the Samoan Treasury under Regulation 89(2).