

ELECTION PETITION re GAGAIFOMAUGA
NO. 2 TERRITORIAL CONSTITUENCY

SUPREME COURT. 1967. 10, May; 5, July. SPRING C.J.

Petition to avoid election - allegations of corrupt or illegal practices - standard of proof - Electoral Act 1963, ss. 112, 113.

It is for the petitioner to satisfy the Court beyond all doubt before an election will be avoided under the Electoral Act 1963.

Welland Election, Buchner v. Currie (1875) Hodgins
Election Reports 187 and Cameron v. Beaton (1915) 48
Nova Scotia Reports 353 followed.

Petition dismissed.

PETITION to avoid election of
Member of Parliament.

Parties in person.

Cur. adv. vult.

SPRING C.J.: The Territorial Constituency of Gagaifomauuga No. 2 was contested by five candidates at the General Election for Members of Parliament of Western Samoa held on the 25th day of February 1967. The Chief Returning Officer declared the final results for this Constituency as follows:

(1)	Taule'ale'ausumai Taulauniu	50 votes
(2)	Amituana'i Vili	28 "
(3)	Tagaloa Ene	20 "
(4)	Tugaga Isa'aka	15 "
(5)	Tuisavai'i Pinati	8 "

Taule'ale'ausumai was accordingly declared duly elected. An electoral petition was duly filed and presented by the abovenamed Petitioners Amituana'i Vili and Tugaga Isaaka seeking to avoid the election of the said Taule'ale'ausumai Taulauniu upon the grounds set out in the petition as follows:

"5. The specific grounds on which your petitioners' complaint is founded are as follows:

- (1) On the 23rd day of January 1967 a general meeting of the villages of Faletagaloa, Matavai, and Fatuvalu was held at Faletagaloa. This meeting was convened by the authorised orators of Faletagaloa.
- (2) In this meeting about 90 per cent of the electors of these 3 villages were present including Taule'ale'ausumai Taulauniu. The spokesman of the meeting said in their speeches, "All electors shall vote for Taule'ale'ausumai Taulauniu; and if any one is found voting otherwise shall be brought to Faletagaloa for judgment."
- (3) When the Orators of Faletagaloa heard the rumour that two electors of Fatuvalu had nominated Amituana'i Vili, the question was therefore asked of Pa'o Kopa if it was true that he and Lalomamu Ioane nominated Amituana'i Vili, because if it were so the two of them would also be brought to Faletagaloa.

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Pa'ō Kopa for he was afraid denied this. Mamea Pelite and Tuliatu laugutu are the leading orators who gave the orders as mentioned while Taule'ale'ausumai Taulauniu said nothing.

- (4) Pa'ō Kopa in the said meeting tried to explain the position but Mamea Pelite, said "Shut your mouth up" and went on to compare Pa'ō to a Dog and not to answer back. Pa'ō went to Aleisa to tell Amituana'i Vili how he was treated and Pa'ō was so afraid to return to Savaii that he stayed in Upolu until the week of the election. Amituana'i Vili believed Pa'ō did not vote for him even though he and Lalomanu Ioane nominated him because he was intimidated and afraid.
- (5) One of the spokesmen in his speech said, "We can tell how any one of you votes for one of the men coming to control the election is one of ours." Your petitioners believe that these words have mislead the electors as they are in normal times afraid of the authority wielded by the orators of Faletagaloa.
- (6) In the same meeting orators representing the village of Matavai said in their speeches that Tuu Filemu and Pese Vaa both of Matavai had asked Pa'ō to give in and to obey the authority of the other recognised leaders in the villages of Faletagaloa for they both could do anything as the usual power of Faletagaloa were still existing. Your petitioners believe that the 18 electors of Matavai were forced to vote not in accordance with their wishes of exercising their individual choice.
- (7) In about the 11th February 1967 Tagaloa Ene one of the candidates carried out corrupt practice which your petitioners believe reduced the number of their votes. Tagaloa Ene presented to the electors of Samauga abundant food, such as cartons of meat and fish, loaves of bread, tins of biscuits, butter, sugar and some moneys for no other purpose but to influence the electors as it was near to the election.
- (8) On the 24th day of February 1967 at about 12 noon and at night Tagaloa Ene gave moneys for the electors of Lefagaoalii, some £1 each and others 10/- each. The same electors came to Amituana'i the same day, but no moneys were given for them. They asked for some but Amituana'i said sorry for it was against the laws of election. Amituana'i could tell the signs of dissatisfaction in the eyes of the electors. Tagaloa Ene and Amituana'i Vili are of the same village of Lefagaoalii. Amituana'i believes that that corrupt practice by Tagaloa Ene was enough to destroy his reputation for he was a sitting member in Parliament."

The said petition was duly tried by this Honourable Court at Safotu on the 10th day of May 1967. Written submissions were duly filed by the Petitioners and the Respondent by the 31st day of May 1967.

Section 112 of the Electoral Act 1963 provides:

"112. Avoidance of election of candidate guilty of corrupt practice - Where a candidate who has been elected at any election is proved at the trial of an election petition to have been guilty of any corrupt practice at the election, his election shall be void."

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And Section 113 of the Electoral Act 1963 provides:

"113. Avoidance of election for general corruption - (1) Where it is reported by the Supreme Court on the trial of an election petition that corrupt or illegal practices committed in relation to the election for the purpose of promoting or procuring the election of any candidate thereat have so extensively prevailed that they may be reasonably supposed to have affected the result, his election, if he has been elected, shall be void.

(2) Except under this section, an election shall not be liable to be avoided by reason of the general prevalence of corrupt or illegal practices."

This Court therefore is required to analyse the evidence adduced at the hearing for the purposes ascertaining whether there has been a breach of either Section 112 or Section 113. (supra).

The Court is also required to have regard to the standard of proof required by law in dealing with electoral petitions.

The Electoral Act 1963 is silent upon the matter of standard of proof.

In Halsbury's Laws of England 3rd Edition Vol. 14 p. 288 it is stated by the learned authors -

"Before upsetting an election the Court ought to be satisfied beyond all doubt that the election is void."

In a Canadian Case Welland Election, Buchner v. Currie (1875) Hodgins Election Reports p. 187 it is stated -

"Before subjecting a candidate to the penalty of disqualification the Judge should feel well assured beyond all possibility of mistake that the offence charged is established. If there is an honest conflict of testimony as to the offence charged or if acts or language are reasonably susceptible of two interpretations one innocent and the other culpable the Judge is to take care not to adopt the culpable interpretation, unless after the most careful consideration he is convinced that in view of all the circumstances it is the only one which the evidence warrants his adopting as the true one."

Again in another Canadian case Cameron v. Beaton (1915) 48 Nova Scotia Reports p. 353 the standard of proof required in charges made in an electoral petition was stated as follows:

"A charge which involves disqualification should be proved beyond reasonable doubt to warrant a finding adverse to the successful candidate."

With the above statements as to the law relating to the standard of proof, I respectfully agree particularly in the instant case as the allegations made by the petitioners are to the effect that bribery and undue influence in the form of threats and intimidation so extensively prevailed that the election should be avoided. It is necessary to consider now the evidence adduced in support of the various grounds in the petition. I should mention that neither Amituana'i Vili nor Tugaga Isaaka were able to give any direct evidence as to the grounds advanced in the petition and they relied on the evidence given by various witnesses called in support of their petition.

I will deal now with the matters mentioned in paragraph 5(a) and (b) of the petition.

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It is alleged that at a meeting held at Faletagaloa on the 23rd day of January 1967 the spokesmen declared "all electors shall vote for Taule'ale'ausumai Taulauniu and if anyone is found voting otherwise shall be brought to Faletagaloa for judgment."

The spokesmen at this meeting appear to be Mamea Pelite, Tuu Matavai Filemu, Tuliatu Laugutu, Poulava Vai and Moafanua Vaisuai. The petitioners first called Pa'o Kopa who was questioned by the Court as follows:

"Q. Have you told me everything that was said at the meeting in relation to derogatory remarks so far as you were concerned"

"A. Yes Your Honour"

"Q. Was there any statement made in the meeting as to how people would vote"

"A. No Your Honour"

"Q. Were you at the meeting from the beginning to the end"

"A. Yes I was"

"Q. You heard all the speeches that were made"

"A. Yes"

The next witness was Poulava Vai who in examination in chief said -

"Q. Was there any reference in a speech by Mamea Pelite wherein it touched on the question of election"

"A. At least there is a point when ballots were mentioned and I will now relate it to the Court. The point raised in the speech by Mamea Pelite was that all should block vote for Taule'ale'ausumai and in the event that it is found out after that a person is not being consistent with that ruling he will be taken to Faletagaloa."

This statement lends support to the allegation which the Petitioners seek to prove. In answer to the Court he says -

"Q. At any of these meetings that you attended at which Taule'ale'ausumai was present did he induce or threaten anybody that they should vote for him.

"A. No Your Honour "

Mamea Pelite was called to give evidence on behalf of the Respondent on the matter of this allegation and in answer to the Court he is recorded as saying -

"Q. Did you in the course of your speech say that all electors should vote for Taule'ale'a that if anyone is found voting otherwise will be brought to Faletagaloa for judgment"

"A. Your Honour I did not make reference as to that which you have just referred me to, I assume that those remarks were made up"

"Q. Evidence has been given by several for the petitioners that you did say that some of the witnesses were Pa'o and the other is Fa'ifa'i, do you know Fa'ifa'i"

"A. As I am still speaking the truth and nothing but the truth that in this meeting there were no references made mentioning this election or has something to do with election"

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Again Mamea was examined by the Court on this matter and his evidence is as follows:

"Q. Do you know Poulava"

"A. Yes I do"

"Q. Poulava has sworn that you said that all should block vote for Taule'ale'a that in the event it was found out afterwards that a person is not consistent with that ruling will be dealt with at Faletagaloa"

"A. As I have tried to explain earlier I do not understand the meaning of this allegation to take someone to Faletagaloa for after all this meeting in question was actually held in Faletagaloa"

"Q. Well we have heard all that, did you say at a meeting that all that were present had to block vote for Taule'ale'a"

"A. On this meeting on the 23, Your Honour, I cannot recollect making any reference at all to a ballot with reference to this meeting was to deal with the offence which Pa'ō and Lalomanu have committed"

"Q. Did you at this meeting say that all should block vote for Taule'ale'a"

"A. No"

The Respondent also called Tuliatu Laugutu and in answer to an examination by the Court he said -

"Q. Did you make any statements to the effect that everybody at this meeting on 23 January 1967 block vote for Taule'ale'a"

"A. No"

"Q. Did you threaten to inflict punishment on anybody who did not cast his vote in favour of Taule'ale'a on general election"

"A. No"

"Q. Did you hear anybody else make such a statement as I have referred you to"

"A. No"

"Q. How many were present at this meeting on the 23rd January"

"A. All the matais of our village were there numbering about forty"

The Petitioners also called Fa'ifa'i Kome who gave evidence and said -

"Mamea Pelite said in that aspect in connection with the ballot he said that you, Pa'ō and Lalomanu Ioane who were the ones who supported Amituana'i will be dealt with accordingly at Faletagaloa whatever the result of the general election"

However, in cross examination he said -

"Q. You said earlier that Mamea stated that Pa'ō and Lalomanu Ioane would in any event after the general election be taken to Faletagaloa if they supported Amituana'i Vili"

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"A. That is so"

"Q. One of the other witnesses said that what Mamea said that if Amituana'i Vili was successful in that election in that event Pa'ō and Lalomanu would be sent to Faletagaloa which is correct"

"A. The correct statement is that if Amituana'i is successful in the general election these two Pa'ō and Lalomanu will be taken to Faletagaloa to be dealt with by the orator group"

"Q. That is not what you said in your evidence in chief you said irrespective of what happen why do you alter your statement"

"A. I made that mistake in giving my reply too soon not thinking properly"

Tuu Matavai Filemu was also called by the Petitioners and he said -

"Q. Was there any other allegation or statement by Mamea which made reference to the ballot between Amituana'i and Taule'ale'a"

"A. The other statement which Mamea said was that if a person does not vote for Taule'ale'a he will be taken to Faletagaloa"

However, he later said in answer to Amituana'i Vili - "It was my own understanding that a person will have to vote according to his own conscience because here are several candidates which have been put forward" This latter statement would appear to indicate that Tuu Matavai Filemu in any event was prepared to exercise his own discretion on election day.

The other witnesses called by the Petitioners were Savea Peko and in answer to the Court he said -

"Q. Do you believe that Taule'ale'ausumai did use influence so far as Amituana'i Vili's nomination for parliament is concerned"

"A. There were no undue influence made by Taule'ale'a"

And he also said at page 25 of the notes of evidence "No there was no undue influence brought to bear by anyone."

In considering whether the allegations in paragraphs 5(1) and (2) have been proved one must have regard to the standard of proof. There are admittedly certain statements made by some of the witnesses which tend to confirm the allegations but on the other hand the evidence of Mamea Pelite and Tuliatu Laugutu refutes the said allegations. Also some of the witnesses for the petitioners when examined by the Court and cross-examined did not "stand up" to the allegations made by them in examination in chief.

I find therefore that (when one considers the totality of the evidence thereon) the allegations made in paragraphs 5(1) and (2) of the petition have not been proved to the standard required by law.

I pass now to the allegations made in paragraphs 5(3), (4) and (5) of the petition.

There is no doubt in the Court's mind that at the meeting on 23rd day of January 1967 at Faletagaloa speeches were made expressing dissatisfaction at the action of Pa'ō and Lalomanu Ioane in apparently supporting one candidate Taule'ale'ausumai Taulauniu and then subsequently supporting another candidate.

It was said in evidence that the main object of the speeches was to bring about peace and harmony in the meeting. Pa'ō stated in evidence that he did not know what he was doing in signing the nomination form of

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Amituana'i Vili. He went on further and said -

"Q. Why do you say you don't know what you were doing"

"A. I did sign the nomination form but later I wanted to withdraw that I was not in favour of signing the nomination form and of course our meeting took place after that"

"Q. Which meeting"

"A. The first meeting"

"Q. The one on the 23rd January at Faletagaloa"

"A. Yes"

It would appear from this evidence given in examination in chief that Pa'o had changed his mind about supporting Amituana'i Vili before the meeting was held on 23rd January 1967 at Faletagaloa. There was further evidence from Pa'o on this point but his evidence generally was unsatisfactory.

Poulava Vai in evidence stated at p. 15 of notes of evidence as follows:

"Q. After the reconciliation was effected on that day in the course of that meeting do you recall the contents of my speech as follows: in that speech of mine I spoke to the effect that if our village found that Pa'o and Lalomanu have already nominated Amituana'i as a candidate of our constituency I am willing to withdraw from being a candidate of our constituency based solely on my intention to keep the village in peace not to raise any disturbance that is after when Tugaga was not willing to withdraw himself from the appointment as a candidate of the general election"

"A. Yes I do confirm that that was the portion of your speech in which you said that you were quite willing to remove your name from the nomination and I was the one who in reply to that speech of yours in which I said, Taule'alo'a don't be downhearted and not to withdraw away from the nomination, I continued on saying if it was God's will that you will win the election you will be appointed by God in such event but if the election resulted by one of the candidates winning who will compete with you in that election then that is the appointment from God also."

This indicates that Taule'ale'ausumai Taulauniu was quite prepared to withdraw from the election. The meeting was held in my view principally to achieve settlement as there was obvious dissatisfaction between some members of the village regarding the action of Pa'o and Lalomanu in nominating Amituana'i Vili. There is evidence that an amicable settlement was reached between the members present. I am advised by Samoan Judge Momoisea that a meeting such as the one called for 23rd January 1967 is in accordance with Samoan custom and that there was nothing sinister about such a meeting being called.

So far as the allegation in paragraph 5(5) of the petition is concerned Taulapapa Tanimu gave evidence in support thereof.

The record of his evidence on this matter is as follows:

"Q. How would the authority know that a person is not voting for Taule'ale'a how would they find out"

"A. I think they could find out after the ballot, I am aware however that the ballot is done in secrecy"

"Q. Why do you say they could find out if it was done in secrecy"

"A. They will bound to know from hearsay"

"Q. Is that the only reason they would know"

"A. Yes"

This evidence does not in my view establish the allegation beyond reasonable doubt. And then Tuu Filemu called by the Petitioners said -

"A. It was my own understanding that a person will have to vote according to his own conscience because there are several candidates which have been put forward"

It is necessary to consider having regard to the allegations contained in paragraph 5(3), (4), (5) of the petition whether the petitioners have established that any breach of the Electoral Act 1963 has been committed. I cannot on the evidence adduced conclude beyond reasonable doubt that the persons attending the meeting on 23rd January 1967 were intimidated by the spokesmen at the meeting.

I find therefore that the petitioners have not proved beyond reasonable doubt that there was a breach of Section 98(2)(a) of the Electoral Act 1963 and accordingly I reject paragraphs 5(3), (4), (5) of the said petition. I am now required to consider paragraph 5(6) of the said petition.

This can be shortly answered by reference to the evidence of Tuu Matavai Filemu at page 37 of the notes of evidence, when he is recorded as saying:

"Q. What is your position in Matavai"

"A. I hold an executive post, making decisions he said to be translated literally" (sic)

"Q. Are you what is generally classed as the spokesman for the village"

"A. I am an orator of Matavai"

"Q. Did you exercise any influence over the electors of Matavai telling them how to vote"

"A. I did not bring undue influence to bear on anyone as to how to vote but each person was given to cast his vote voluntarily"

"Q. It has been alleged that you did, that the 18 voters of Matavai were forced to vote not in accordance with their wishes do you agree with that"

"A. I would respectfully submit that that was an error"

I reject therefore the allegation contained in paragraph 5(6) as the evidence of Tuu Matavai Filemu a witness called by the Petitioners does not support the allegation they seek to establish. I now pass to a consideration of paragraphs 5(7) and (8) of the said petition.

It is alleged that Tagaloea Ene who was a candidate in this Constituency was guilty of corrupt practice namely bribery and treating.

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Now it is the essence of the offence of treating that it should be corrupt, that it should be done with an improper motive and that it should be done for the purpose of doing something which is contrary to the law. It is therefore necessary to examine the evidence in order to ascertain what was the purpose of Tagaloe Ene in bringing food as proved in the evidence. Tagaloe Ene was called by the petitioners to give evidence in support of the allegation contained in paragraphs 5(7) and (8) of the said petition. No evidence was called from any on the persons whom Tagaloe Ene was alleged to either treated or bribed. So the case for the petitioner rests so far as these allegations are concerned in paragraphs 7 and 8 on the evidence of Tagaloe Ene. Tagaloe Ene stated that he did bring some foodstuffs namely two kegs of beef, two tins of biscuits, sack of sugar, two pounds of butter, two 6lb tins of meat. The reason he stated that he brought these foodstuffs was that he had been summoned by his family to come to Samauga and receive a title. He stated further -

"A. I have no intention whatsoever to bring these foodstuffs in order to induce the electors in anyway whatsoever but as I have made mention earlier that the main intention of bringing these foodstuffs with me in reply to the question put to me by Amituana'i was when I said that the purpose of bringing these foodstuffs was my receiving the title" that

There is no doubt/the taking of food in the circumstances such as this is in accordance with Samoan custom. It is quite proper, I am advised by Samoan Judge Momoisea who heard the evidence on this point, that Tagaloe Ene should in such circumstances make a "fa'aoso". Tagaloe Ene denies that he had any intention in making the presentation of food to influence the voters as to which way they should vote. It is also alleged that Tagaloe Ene by paying moneys to some of the electors of Lefagaoalii was guilty of bribery. In a charge of bribery a corrupt motive must in all cases be strictly proved. The Court has always refused to give any exhaustive definitions on the subject and has always looked to the exact facts of each case to discover the character of the transaction. A corrupt motive must in all cases be strictly proved. There is no doubt that Tagaloe Ene did give some moneys to the matais of Lefagaoalii. When questioned about this matter Tagaloe Ene says -

"A. I strongly object this impression as put to me in the question of Amituana'i whether I made these monetary donations to the electors or voters but as I have mentioned that it was the custom why I donated these moneys to these matais of Lefagaoalii as I have stated before that it was more than six occasions when matais of Lefagaoalii called to me with Kava in accordance with Samoan custom and I have to give them monetary donations according to the custom."

"Q. Was there an intention to influence them as far as election is concerned."

"A. No Your Honour."

Tagaloe Ene claims that the payment of money as proved in the evidence was in accordance with Samoan custom and again I am advised that this is a practice adopted by Samoans in circumstances such as the instant case.

Now it is well established in law for the petitioners to succeed in their allegation of treating and bribery that the petitioners must prove that it was the intention of Tagaloe Ene to induce the voters to vote other than in accordance with their conscience. When one examines the whole of the evidence, (and as I have said earlier the only evidence on this point is from Tagaloe Ene himself), the petitioners have not proved to the standard required by law that it was the intention of Tagaloe Ene

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to induce the voters to vote other than in accordance with their conscience in fact the sworn evidence is just the reverse. I find therefore that there is nothing in the evidence of Tagaloa Ene to justify the conclusion that he was guilty of treating or bribery within the meaning of these words in the Electoral Act 1963.

In conclusion, therefore, I find that the petitioners have failed on all grounds set forth in their petition and accordingly the petition is dismissed.

The sum of £50 has been lodged with the Supreme Court as security for costs. I hereby order -

- (a) that the sum of £30 be and the same is hereby fixed as the Court costs payable by the petitioners, and
- (b) the further sum of £10 is hereby ordered to be paid to Taule'ale'ausumai Taulauniu, and
- (c) the balance of £10 is hereby ordered to be refunded to the petitioners.