

RE ELECTION PETITION RE SAFATA
Territorial Constituency No. 13

PULE LAMEKO v MULIAGATELE VENA

Supreme Court Apia
17, 18, 30 April; 10 May 1979
Nicholson CJ

ELECTIONS (Corrupt practices) - Bribery - s 96(3)(a) Electoral Act 1963 - Standard of proof - Standard in criminal cases correct standard in election cases: Election Petition re Gagaifomauga No. 2 Territorial Constituency [1960-1969] WSLR 169 referred to - Evidence beyond reasonable doubt that moneys distributed among voters on eve of the Election were intended by the candidate as an inducement to the recipients to vote for him - Candidate also admitting 'such payments' at Election time exceeded those normally required by Samoan custom of a Member of Parliament.

EVIDENCE (Accomplices) - Necessity for corroboration - Uncorroborated evidence of one witness who had accepted bribes considered unreliable - Evidence of three other witnesses who were technically accomplices accepted as true as they corroborated each other as to the pattern and two of them corroborated each other in material particulars.

PETITION for a declaration that the Election of 24 February 1979 was void, or alternatively, that the petitioner be declared the successful candidate.

Chief Returning Officer joined as second respondent.
Counter charges of bribery having been proved against the petitioner the Election was declared void.

Va'ai for petitioner.
Nickells for first respondent.
Sapolu and Fuimaono for second respondent.

Cur adv vult

NICHOLSON CJ. On the 9th of March, 1979 the Chief Returning Officer officially declared the result of the General Elections held in Western Samoa on the 24th February, 1979. The declared result for the Safata constituency was as follows:-

Anapu Aiali'i	93
Mata'uiua Esau	54
Muliagatele Vena	128
Pule Lameko	<u>127</u>
Total	= 402 Valid Votes
	3 Informal

By a petition dated the 23rd of March, 1979 Pule seeks a declaration

that the election is void, or alternatively that the petitioner be declared the successful candidate upon the grounds that on Election Day, the first respondent distributed bribes to six voters through his agent Faumui Galomasamoa Lolagi (hereinafter referred to as Galoma), contrary to section 96 of the Electoral Act 1963. At the hearing, evidence was not confined to this allegation and the Court heard in addition -

- (a) evidence relating to alleged payments of money and gifts of liquor to voters made during the Election campaign period by the first respondent;
- (b) evidence relating to alleged payments of money made to voters during the Election campaign period by the petitioner;
- (c) evidence relating to alleged payments made to voters during the Election campaign period by the candidate Mata'uiau.

Dealing first with the allegations of bribery on Election Day, Toleafoa Lisone told the Court that on the morning of the 24th of February, 1979 when he was on his way to the polling booth at Fausaga to cast his vote as a matai, he was picked up by a motor vehicle driven by Galoma. When he got into the vehicle Galoma bent down and opened a satchel and then offered his hand to Toleafoa. When they shook hands Toleafoa said he felt something in his hand and found that it was \$3.00, which he put in his pocket. He said he asked Galoma what it was for and Galoma said it was already known to him. He said he knew the vehicle in question was the property of the first respondent although there was a driver in the vehicle, who was unknown to him. He said that he believed that he received the \$3.00 from Galoma because Galoma was campaigning for the first respondent.

Toleafoa mentioned that on the day before the Election he had been at the office of the first respondent in Apia at 2:00 p.m., that Galoma had pointed out the office to him and told him to go in, that there he was given a bottle of spirits by Galoma under the direction of the first respondent, who was present, and that when he left Galoma gave him \$5.00.

Numia Peato, a matai of Mulivai in Safata constituency, told the Court that he was at the Committee House at Mulivai at about 2:00 a.m. on 24th February, 1979 when a vehicle arrived and Galoma got out and asked for the whereabouts of Numia's title co-holder. He was given directions and went to the house in question and then returned to the Committee House where he alighted and handed \$2.00 to each of the several matais and untitled men present at the Committee House. At the time he used the words "tomorrow is Election Day". Numia said he believed the vehicle in question belonged to the first respondent. He said there were about five matais and three untitled men present.

Misa Paio also confirmed that he was at the Committee House at Mulivai and that about 2:00 or 2:30 a.m. Galoma came there and called to him. When he approached the vehicle Galoma got out and shook hands with him and gave him \$3.00 and then asked for directions to the house of Numia Mikaele. Galoma then left but he returned and he stopped at the Committee House and distributed money to the other matais and untitled men who were present. He said that when Galoma handed him his \$3.00 he said, "Misa, tomorrow is Election Day". Misa said that he knew the vehicle was the first respondent's from having seen it frequently at their village. In cross-examination Misa said that he understood that he was being bribed when he received the money. He said that Galoma was in a happy mood but he did not think that he had been drinking. He denied that Galoma arrived as early as 11:00 p.m. on the Friday night. Apparently, Misa and the other matai were at the Committee House to observe the curfew period from 10:00 p.m. to 6:00 a.m. in the village.

Tufugafale Lole, a matai of Tafitoala in Safata constituency, said that about 1:00 a.m. on Election morning he saw the vehicle containing Galoma stopped outside his house. He said Galoma asked to shake hands, and when they shook hands Galoma put money in his hand. He said Galoma

did not say anything, but the whole of the circumstances led him to believe that the money was a bribe for the Election. He said that Galoma left as soon as he had given him the money. Witness said that he recognised the motor vehicle as belonging to the first respondent. Galoma returned later and gave him a ride in the vehicle to the polling booth at Sataoa.

Numia Mikaele said that he was a matai of Mulivai and an elector in the Safata constituency. In the early hours of Election Day, he guessed at about 4:00 a.m., he was wakened by Galoma coming to his house and giving him \$2.00. He did not say what it was for and Numia did not ask the reason for it. He said he is related to Galoma, but that Galoma had never given him money before. He said Galoma owns no vehicle and is a planter. He said he was in a good mood but he had not been drinking.

In relation to these allegations the first respondent gave evidence stating that he did engage Galoma to assist him in his Election affairs. Galoma, according to his evidence, had two distinct functions. One was to keep the first respondent informed of the progress of other candidates in the electorate during the Election campaign, and the other was to receive visiting electors at the first respondent's office in Apia and to talk to them and to make gifts to them of small sums of money under the guise of bus fares. Galoma was engaged along with two other matais of the constituency in the office of the first respondent for about three weeks prior to the Election to do this work on behalf of the first respondent who, because of his business commitments, could not afford the time to see each constituent. The first respondent said that he paid Galoma and each of the other two matais between \$250.00 and \$400.00 per week during the three week period and that this was for their own needs and the sums varied according to their needs. Galoma also had the use of one of his business vehicles, the first respondent said, to move about the electorate. He said that Galoma had no authority from him to conduct electioneering on his behalf, and he had not authorised him to pay bribes or make gifts to the electors.

Galoma confirmed the evidence of the first respondent as to the arrangement existing between them and acknowledged making some of the payments described by the petitioner's witnesses and denied others. In particular, he denied giving money to Toleafoa on the morning before the election, and he denied giving Numia Mikaele money. But he did admit that he had given money to the people gathered at the Committee House at Mulivai, and that he also gave money to Tunumafono Sale on Election Day. He said that the money he gave was his own and as far as the men at the Committee House at Mulivai were concerned, he saw they were playing cards and simply gave them money to play cards with. He denied reminding them that it was Election Day. He said he made the gifts simply because he was in a happy mood and he was drunk. He admitted that he did visit Numia Mikaele that night, but merely to tell him that he would transport him to the polling booth next day. He said that the large sums of money he earned from the first respondent during the three weeks prior to the Election Day were spent on his family, on church donations, and on hospital patients, and the like. He said that he had no authority from the first respondent to distribute moneys to the voters in the constituency as described by the witnesses, and that there was no intention to bribe on his part.

On the question of standard of proof of allegations in election proceedings, I have had the opportunity of reading the decision of Spring C.J. in Election Petition re Gagaifomauga No. 2 Territorial Constituency [1960-1969] WSLR 169 where he reviewed a number of authorities, which suggest two alternative standards of proof, viz., -

- (a) proof beyond all doubt; and
- (b) proof beyond reasonable doubt.

He went on his judgment to apply the criminal standard of proof beyond reasonable doubt. I respectfully agree that that is the correct standard of proof to apply in election cases. The judicial overturning of an

election result may only occur when the allegations made have been proved beyond reasonable doubt.

I accept the evidence of the petitioner's witnesses relating to the moneys paid to them on Election Day. I am satisfied that Galoma handed out money to all of them, that in the case of most of them he reminded them that it was Election Day, and I think it is the overwhelming inference to be drawn from this evidence was that Galoma was endeavouring by these payments to induce these voters to vote in favour of the first respondent.

On the question of whether or not Galoma had the approval of the first respondent in making these payments, I draw the inference from the evidence as a whole that the first respondent was aware of, approved of, and contributed to these payments. From the evidence, Galoma was a man of little or no substance, and the first respondent had presented him with these large sums of money and the use of the first respondent's vehicle in the constituency during these three weeks leading up to the Election. The moneys paid by the first respondent to Galoma were grossly excessive for the services Galoma was alleged to have been performing in comparison with the normal wage structure prevailing in Western Samoa. I do not accept the explanation of the first respondent and Galoma that these moneys were simply paid as salary. I draw the inference that at least part of this money was intended to be used for the purpose that Galoma did use it for on Election Day, viz., to distribute moneys among voters with the corrupt intention of inducing voters to vote for the first respondent.

I therefore find it proved beyond reasonable doubt that the first respondent and Galoma were both guilty of the corrupt practice of bribery on Election Day in the instances cited by the petitioner's witnesses, in terms of section 96(3)(a) of the Electoral Act 1963.

Turning to the next aspect of this Election, which was dealt with by the evidence, namely, allegation of payments of money and gifts made prior to the Election by the first respondent, most of the evidence relating to these matters comes from the first respondent's own evidence, and the evidence of his assistant Galoma. Their account reveals to my mind a most extraordinary state of affairs. It appears that the first respondent's personal business affairs prevented him from actively campaigning himself, and he did not set foot in his electorate from Boxing Day 1978 until Election Day. He explained that he was regarded by the constituents as the father of his constituency and that very frequently throughout his term of office in the preceding term of Parliament constituents would call to ask for contributions to school fees, to funeral expenses, and for travel expenses overseas. He confirmed, however, that in the two or three weeks prior to Election, the normal flow of three to five persons a day coming and asking for such favours increased to the extent that frequently between fifty and sixty persons per day were calling, and even up to one hundred in a day, at a time during the Election campaign when a cricket tournament was being held in Apia. These visits went on for six days of the week for at least the three weeks prior to the Election. Both the first respondent and Galoma told the Court that during that three week period the first respondent would hand to the three matais who received voters at his office on his behalf, some \$50.00 to \$60.00 daily with instructions that it was to be handed out in lots of \$2.00 only to matais who called. This payment was euphemistically referred to as "bus fares", but the evidence shows quite clearly that this was not the true purpose of the payments, and that they were mere gratuities given to every matai voter who cared to call at the office, and they were given no matter how often a matai might call at the office. The first respondent said that on some days there were so many matais calling that he was obliged to replenish the supply of money at lunch time to cope with the flow of matais calling in to receive these gratuities.

The first respondent denied any intent to bribe, but looking at the evidence of this extraordinary arrangement, estimating the number of calls made by matais in this period, and bearing in mind that only 405 electors voted in this constituency, I have no hesitation in concluding that these payments amounted to bribery of voters on a grand

scale. While the individual payments may have been small, it is obvious that a great deal of money was expended by the first respondent in direct gratuities to the voters who called.

Moreover, although the first respondent appeared to be suggesting that he made these payments merely to comply with Samoan custom, he said, himself, that at Election time, the matais took advantage of the candidates in calling on them for payments frequently. I regard this as a clear admission that these payments at Election time were beyond what was normally required by custom of a Member of Parliament. Indeed, the picture painted by the first respondent and Galoma is of an electorate with a very high proportion of voters who deliberately solicited and obtained these payments from the candidates in the knowledge that the candidates were seeking their support. If this picture is a true one for the whole country, as the first respondent's evidence tends to suggest, then I can only comment that a very large proportion of the voters of this country has been guilty of bribery in terms of section 96(7) of the Electoral Act 1963.

I find that the first respondent was guilty of the corrupt practice of bribery in that the payments that he caused to be made in that three week period were made with the intention of inducing the constituents to vote for him at the Election, in terms of section 96(3)(a) of the Act.

I turn now to the allegations made against the petitioner. Galoma said in evidence that he attended a party at the petitioner's home on 15th January, 1979 when there were some twenty matais present. They had been transported there by the petitioner and Galoma received about \$40.00 from the petitioner to distribute among the matais. He gave them each \$2.00. He said speeches about the Election were made.

Tunumafono Sale, a Safata constituent, said he went to several such parties given by the petitioner during the campaign period, that he received \$2.00 each time himself, that the number of matais at these parties varied from ten to forty, and that the petitioner would urge them to support him in the coming Election. He also mentioned going to the petitioner's office in Apia on four occasions in the expectation of receiving a cash payment. Each time he and his companions would receive \$2.00 each with an admonition to support him. He acknowledged receiving similar payments from first respondent.

Letoi Pe'a, a constituent of Safata, told the Court that he attended parties at the petitioner's house on two occasions, the first about three weeks prior to the Election, and the second about one week prior to the Election. On both occasions, the petitioner supplied transport and election speeches in favour of the petitioner were made. Food and liquor was supplied and money distributed from the petitioner by Galoma on the first occasion, and by Letoi himself on the second. About twenty matais attended the first party, and about thirty the second. On a separate occasion at a village meeting the petitioner, after making his candidate's speech, gave Letoi \$2.00. He acknowledged receiving three payments of \$2.00 each from Galoma at the first respondent's office in Apia during the campaign.

The Court offered the petitioner the opportunity to call evidence in rebuttal, but the petitioner declined the opportunity.

Letoi's evidence impressed me as truthful, and although he and Galoma differ as to the date of one party, it appears that they were giving evidence of the same occasion. Again, Tunumafono's evidence is of a similar pattern of parties given by the petitioner, and while technically all three witnesses are accomplices, they corroborate each other as to the pattern, and two of them corroborate each other in material particulars. I accept their accounts of the parties as true, and find proved beyond reasonable doubt that on at least three occasions these parties occurred and that on each occasion the petitioner made the payments described to voters as inducements to them to vote for him in the Election. I find these payments constituted bribery in terms of section 96(3)(a) of the Electoral Act 1963. Tunumafono's and Letoi's evidence of other payments by the first respondent is uncorroborated, and I therefore find those allegations not proved beyond reasonable doubt.

Finally, I consider the allegations concerning the candidate Mata'uiau. The only specific allegations are contained in the evidence of Tunumafono, who said he went to Mata'uiau's office in Apia on four occasions expecting to receive money, and he was given \$2.00 by the candidate each time. Mata'uiau said he would like to represent the district, and told him whenever he and his companions come to Apia to see him and he would give them money. Mata'uiau declined the opportunity to give evidence in reply.

Again, I remind myself that Tunumafono's evidence must be regarded as that of an accomplice requiring corroboration of his allegation against Mata'uiau. There is no corroboration for this particular allegation and I am not prepared to rely on his uncorroborated account in such a serious matter. I find, after careful consideration, that the allegation against Mata'uiau has not been proved beyond reasonable doubt.

I declare the Election in this constituency void and will report my findings to the Honourable the Speaker of the House.

I make no order as to costs.