

FAASALELEAGA NG 4 TERRITORIAL CONSTITUENCY:
re VUI (VILIAMU)

Supreme Court Apia
Ryan CJ
28 June 1991

ELECTORAL LAW - election petition - allegations of bribery and treating - Electoral Act 1963 - supporter's campaign committee acting on candidate's behalf - standard of proof.

There were allegations of bribery and of treating. The allegation of treating arose out of a gathering of some 108 people, hosted by the campaign committee, the day prior to the election, where meals were provided.

- HELD:
- (1) The gathering was devoted to educating the voting populace on the procedures of an election: this was the first election with universal suffrage.
 - (2) Proof beyond reasonable doubt was not required to make out a prima facie case but no evidence of real substance was provided by the Petitioner.

LEGISLATION:

- Electoral Act 1963; Ss 92 (2)(b), 97, 112, 113.

A S Va'ai for petitioner
R Drake for first respondent

At the conclusion of the Petitioner's case I invited counsel to address me on the question of prima facie case. The only evidence before the Court at this point of the trial is of course the affidavit evidence of the Petitioner and the oral evidence of the various deponents who swore affidavits.

The Petitioner originally alleged four breaches of the law. The most substantial allegation was withdrawn yesterday so that the evidence today was confined to two allegations of bribery and one of treating. The evidence does not suggest that the First Respondent himself has been personally guilty of any corrupt practice but rather that his supporters and/or campaign committee

members actually committed the offences but did so on his behalf. Accordingly S.112 of the Act which makes it mandatory for the Court to avoid an election if the successful candidate himself has been guilty of corrupt practice, has no application.

The section applicable therefore is S.113 where the Court can only make an order declaring an election void where it is reported to the Court that the corrupt practices have so extensively prevailed that they may be reasonably supposed to have affected the result.

What is the evidence so far adduced.

Tupu Tipasa and his wife both said that they were given \$20 to buy sugar or soap. They were cross examined on that point when the suggestion was put to them that the money was for transport. The transport would only have cost \$4.80 so I am satisfied that on this issue the evidence of the witnesses would require answering.

Another witness Kalolo Vui gave evidence in his affidavit that one Iiga Poufa gave \$20 to Seiuli Paulo who gave the money to him. In answer to a question posed by his own counsel today he gave the reverse answer viz that Seiuli Paulo gave the \$20 to Iiga who gave it to him. That of course is most unsatisfactory and on that issue I am satisfied that no properly instructed jury could convict if this was a criminal trial. I must say also that overall he was a far from convincing witness who in my assessment would agree with practically any suggestion that was put to him. Accordingly I take the view that a case has not been made out on that allegation of bribery.

The remaining allegation against the First Respondent is that he has been vicariously guilty of treating. It was not really disputed by the Respondent during the course of the Petitioner's case that in the day or so prior to the election a large number of people attended a gathering at Sinomoga obviously hosted by the Respondents campaign committee. Up to 108 people were apparently fed meals at the appropriate meal times, instruction was given in the execution of the ballot forms and general discussion obviously occurred. There is no suggestion that drink or entertainment was provided. My overall impression was that altogether it must have been a fairly boring occasion. Be that as it may the Petitioner submits that this amounted to treating. The food provided was clearly of better quality than the average householder would consume on a day-to-day basis but the evidence does not satisfy me that it was anything more than would be provided to any guest, casual or invited. The suggestion is that the alleged treating was for the purpose of corruptly procuring the Respondent to be elected under Section 92(2)(b).

Once again, as I stated in the decision given in the previous Election Petition this was an unusual election given that it was the first involving universal suffrage. There really was very little time to educate the voting populace about election practices and procedures, and it is clear that with many people and the witness Kalolo is a classic example, he voting in an election for the first time at 48 years of age, that it would have been necessary to spell out procedures in fine detail.

It is obvious from the evidence that part of the time at the gathering was devoted to this electoral aspect and overall I am quite unconvinced that the supply of meals at the gathering could be interpreted as treating within the terms of S.97. Proof beyond reasonable doubt is not required at this stage of the proceedings but the Petitioner has not presented evidence of substance on this issue at all. It can hardly be suggested that the food supplied was extravagant by any yardstick. Hardly a feast fit for a king. Mr Va'ai did submit that the mere fact that 108 were present is an indication that this was tantamount to an "extensively prevailing corrupt practice". With all due respect I cannot accept that argument. This was one incident and even if it was accepted by the Court that this amounted to treating, which it is not, the net effect would be that there are only two incidents, both occurring at the same time within a day of the election and in my view it would be an affront to the electoral system to hold that an election should be voided for that reason. In reality this is an example of a Petition which lacks substance and borders on the frivolous and vexatious. I hold therefore that the Petitioner has not made out a prima facie case and I will hear counsel on the question of costs.

Costs will follow in the normal way against an unsuccessful litigant. The Petitioner will pay costs of \$600 to the Respondent together with witnesses expenses of 10 witnesses for three days.