

ANOAMA'A EAST ELECTION: re FAAMATUAINU (TALA MAILEI)
& OTHERS v MOANANU (SALALE)

Supreme Court Apia
Ryan CJ
10, 12 June 1991

ELECTORAL LAW - Petition - bribery, treating and undue influence.

HELD: Bribery, treating and undue influence having been established a by-election should be held.

R S To'ailoa for Petitioners
F M Sapolu for Respondent

The Court has been concerned throughout the hearing as to the extent of bribery, treating and undue influence which has so far been revealed in the evidence.

Counsel concede that the evidence establishes widespread bribery, treating and undue influence and that a by-election should be held.

Accordingly there will be the following orders by consent:

1. With regard to the first prayer in the Petition: That it may be determined that the said Respondent Moananu Salale was not duly elected and that his election was void: That prayer is granted.
2. With regard to the second prayer in the Petition: That the candidate Tuiatua Tupua Tamasese Efi should be declared and reported duly elected as Member of Parliament for the Anoama'a East Territorial Constituency: That prayer is refused.
3. That a by-election shall be held for the Constituency of Anoama'a East.
4. That all witnesses who have given evidence either orally or by way of affidavit are hereby granted certificates of immunity.
5. That each party will bear their own costs.

Those are the formal matters that I had to deal with. Now I want to say a few words about the by-election which will be held shortly.

The Constitution of Western Samoa in Article 13 provides various rights of free speech expression and religion.

In Samoa universal suffrage is now the law and it is the very essence of democracy that people should be free to vote for the candidate of their choice. It is not appropriate for other persons to dictate just how the individual shall vote. In this regard it does seem to me that Village Councils have a very real responsibility to ensure that all candidates shall be given ample opportunities to express their views and the views of their parties, if they belong to one, to all of the members of a village without fear of retribution just as importantly without the necessity of bribery or treating. Indeed it does seem to me that if candidates are given appropriate opportunities to talk to the electorate and of course to answer any questions put to them,

then the misguided view that votes might need to be bought will be removed.

A vote is not a piece of property which should be for sale in the conventional sense that the word sale is used. It should be bought only with the currency of ideas, of argument and of persuasion.

There are lessons to be learnt from the evidence that we have heard in this case and they are:

1. That it is not acceptable practice to attempt to influence a person's vote by the provision of goods and money.
2. That village Councils have an obligation to ensure that all points of view are aired and that the way a person votes should not be dictated to them.
3. That the welfare of Western Samoa demands that free democratic elections be held.

Finally I would like to make a plea to the Matais of Lufilufi. The evidence reveals that certain persons have been banished from the village. It is not within my powers to order that the banishment orders be set aside but I would ask very sincerely that you reconsider those decisions in the light of the orders made in this Court, so that everyone, even those who may have acted in a way which was contrary to the views of the Council, are restored to the positions within the village which they held prior to the election.

I trust that the by-election will be held in harmony and with everyone conducting themselves in a manner befitting Samoan culture and traditions.