

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

MISC. 20446

IN THE MATTER of The Electoral Act and Amendments

A N D

IN THE MATTER concerning the election of a Member of Parliament for the Territorial Constituency of Aana Alofi No.1

BETWEEN: TOLEAFOA FAAFISI of Fasitoota in Western Samoa, a candidate for election

Petitioner

A N D: TUAIFAIVA TAMAFILI SEIULI of Fasitoota and American Samoa, a candidate for election

First Respondent

A N D: MASE TOIA ALAMA of Alafua, Chief Electoral Officer

Second Respondent

Counsel: T R S Toailoa for petitioner Toleafoa Faafisi  
P Meredith for first respondent Tuaifaiva Tamafili  
H Schuster for second respondent Chief Electoral Officer  
T K Enari for intending substituted petitioner Maiava Nafatali

Hearing: 24 June 1996

Judgment: 28 June 1996

---

JUDGMENT OF SAPOLU, CJ

---

The present judgment follows on from the judgment I have just delivered in respect of the election petition originally filed by Tuaifaiva Tamafili, the first respondent in these proceedings.

An election petition dated 15 May 1996 was filed by Toleafoa Faafisi seeking a declaration that Tuaifaiva Tamafili was not qualified to be a candidate in the general election held on 26 April 1996 on the ground that Tuaifaiva Tamafili did not reside in Western Samoa for a period of not less than 12 months ending with his nomination in terms of section 5(3) of the Electoral Act 1963 as amended by section 4(2) of the Electoral Amendment Act 1995. Then by application dated 12 June 1996 Toleafoa Faafisi sought leave from the Court to have his petition withdrawn on the ground that the matter has been resolved. That application was duly advertised in a local newspaper. The application was then called before this Court on Monday, 24 June 1996. Counsel for Tuaifaiva Tamafili consented to the application. No other person appeared to register objection or show cause as to why the application to withdraw should not be granted.

In these circumstances and in view of what will follow in this judgment leave is granted to Toleafoa Faafisi to have his petition withdrawn and that petition is accordingly withdrawn by leave.

Under section 128(2) of the Electoral Act 1963, it is in the discretion of the Court whether to grant an application made by a person to be substituted as new petitioner in place of a petitioner who proposes to have his petition withdrawn. The present applicant Maiava Nafatali came fourth with 376 votes in the poll for the territorial constituency of Aana Alofi No.1 and the first

respondent Tuaifaiva Tamafili came third with 476 votes. Both of them were unsuccessful at the poll.

The allegation in the petition against Tuaifaiva Tamafili, as I have stated, is that he did not satisfy the statutory residential requirement to be qualified as a candidate in the general election. Tuaifaiva Tamafili as already stated was unsuccessful at the poll and the election petition he had filed against the two successful candidates has now been withdrawn.

It is clear that in the circumstances of this case, to continue the petition against Tuaifaiva Tamafili will be just an academic exercise which will serve no useful and realistic purpose. Whether or not Tuaifaiva Tamafili was qualified as a candidate in the last general election now appears to be an academic point.

The present application to be substituted as new petitioner is therefore denied.

As no party asked for costs, there will be no order as to costs.

*T F M Sapsu*  
.....  
CHIEF JUSTICE