

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

MISC: 20456

IN THE MATTER of The Territorial Con-
stituency of Falealili

A N D

IN THE MATTER of an Election Petition

BETWEEN: FUIMAONO ESTERA RIMONI of
Falealili, Matai

Petitioner

A N D: FUIMAONO LOTOMAU of
Falealili, Matai

Respondent

Counsel: R Drake for petitioner
T R S Toailoa for respondent

Hearing:

Judgment: 23 July 1996

JUDGMENT OF VAAL, J

The respondent was one of the two successful candidates for the constituency of Falealili in the General Election held on the 26th april 1996. The petitioner was one of the eight unsuccessful candidates. The petitioner seeks to avoid the election of the respondent upon three allegations of bribery.

After the petitioner had closed his case I ruled after hearing submissions

from counsels that the only allegation of bribery prima facie established by the petitioner was :

- (a) The respondent on the 21st day of April 1996 gave Patea Faiaga, an elector from the Falealili constituency the sum of \$200 to induce him and his family to vote for the respondent.

According to the oral and affidavit testimony of Patea Faiaga the respondent came to his home on a Sunday morning, the 21st day of April and gave him \$200 in the presence of his son who is also an elector. The respondent told Patea Faiaga that he had wanted to come and visit as Patea had been sick for quite some time. And when the \$200 was handed over Patea told the respondent that there was no need to give such a large sum of money; but the respondent replied that it was because he had been unable for many days to come and visit. The respondent then asked Patea for Patea and his family to remember him on election day. The same witness further stated in his sworn affidavit that it is not usual for the respondent to visit; the last visit by the respondent was prior to the previous general elections.

Under cross examination however this same witness appeared to change story. He stated the respondent came on Sunday, the 7th of April. He also testified that for a number of years he had a close relationship with the respondent; the respondent had assisted him financially on a number of occasions; the respondent assisted him when his wife passed away; the respondent assisted him whenever he asked the respondent for assistance. Furthermore he testified that the respondent did not say anything about the forthcoming elections when the \$200 was

handed over and that the \$200 was for his sickness.

Siliniu Faalata the son of Patea testified that he was present when the \$200 was given to his father and that the respondent said he had wanted for a long time to come and visit. He was adamant under cross examination that the respondent did say to his father to remember the respondent on election day. This same witness testified the respondent also told him for the witness and his wife to remember the elections. When questioned why he and his father had given conflicting evidence he said his father who is a sick man has probably forgotten that the respondent did say to remember the elections.

Faamanu Patea, son of Patea also testified that the respondent did visit on Sunday, the 21st April whilst his father Patea and his brother Siliniu were inside their open house. The respondent was accompanied by his son Alo. Faamanu said he was outside and he saw and heard what the respondent was doing and saying inside the house. He was with Alo the son of the respondent. He heard the respondent saying to his father Patea for Patea and his children to remember the elections.

The respondent does not deny visiting Patea on Sunday morning, the 21st April 1996. He admits giving Patea \$200. But he denies that the \$200 was corruptly given for the purpose of inducing Patea Faiaga and his family to vote for the respondent.

The respondent testified that :

- (1) He has helped and looked after Patea for many years.
- (2) Because it has been a while since he last saw Patea he felt obliged to give him some money to support him as he is now bed ridden from stroke.
- (3) He had no intention of bribing Patea as Patea has always been a supporter.
- (4) He denies telling Patea for Patea and his family to remember him on election day.
- (5) He assisted Patea in July 1994 when Patea was sick and taken to New Zealand.
- (6) He again assisted Patea towards the end of 1995 when Patea was sick. He gave Patea and his family sums of monies.
- (7) He gave customary donations in forms of finemats and monies when Patea had faalavelave like when the wife of Patea passed away. Likewise Patea also reciprocated, when the respondent had faalavelave.
- (8) He was told on Friday whilst he was attending to ministerial duties that Patea was sick but on Saturday the respondent attended a family funeral and the first opportunity for him to see Patea was Sunday morning.
- (9) It was his son Falanaipupu who drove his car on Sunday morning to the house of Patea but not his son Alo who returned to Australia after the elections.

In considering the evidence to determine the allegation of bribery against the respondent I remind myself of the standard of proof required in election

cases: see *Election Petition re Safata Constituency [1970-1979] WSLR 239* as well as the warning in respect of the evidence of an accomplice.

I accept from the evidence that Siliniu Faalata was with his father Patea when the respondent visited on Sunday morning, the 21st April 1996 and gave \$200 to Patea. I also accept that the respondent has in the past assisted Patea and his family financially when requested by Patea and that the last time Patea and the respondent saw each other was towards the end of 1995 when Patea and his family visited the respondent at Motootua as Patea was at the time a sick man. The respondent testified that he felt obliged to visit Patea as he has not seen him for a long time. Patea Faiaga and his two sons Siliniu Faalata and Faamanu Patea all confirmed that the respondent did say that he had wanted for a long time to come and visit Patea.

Did the respondent have a corrupt intention to influence to votes of Patea and his family. The respondent says he had no such intention as Patea has been a long time friend and a supporter. I have given the evidence careful consideration and conclude that the payment of the \$200 to Patea on the 21st April 1996 was given with the corrupt intention of inducing the votes of Patea and his family to vote for the respondent. I reach this conclusion upon these grounds :

- (1) The election was only five days away when the payment was made.
- (2) The amount paid was quite substantial.
- (3) Patea did not request any financial assistance from the respondent.
- (4) The last time the respondent assisted Patea was towards the end of

1995 when Patea sought assistance as he was then a sick man.

- (5) Patea has been sick for some time and the respondent through his own evidence told Patea he had wanted for a long time to come and visit and the visit was not made until very close to elections.

I also accept that the respondent at the time he gave the \$200 told his old time friend to remember the elections. I reject the evidence of Patea in cross examination that the respondent did not refer to the elections when the payment was made. The reason for the change of evidence by Patea in my view is found in the admission by the respondent in cross examination that the respondent did visit Patea prior to the commencement of this election petition trial because he was concerned about their relationship. The visit was made with full knowledge that Patea is a witness for the petitioner and according to the respondent he was told by Patea he will not come to Court. The demeanour of Patea in the witness box indicated that he was an unwilling witness for the petitioner.

I find the allegation against the respondent proved and I declare his election void.

I now turn to the counter allegations made by the respondent against the petitioner.

The first allegation is that the petitioner gave one Loi Taufao the sum of \$10 on or about the first week of April 1996 to induce the said Loi to vote for the petitioner. Loi Taufao testified that he was in front of his house when he was approached by the petitioner who told him he is a candidate in the forth-

coming elections. During the course of their discussions the petitioner gave him \$10 and told him to remember the elections. The petitioner on the other hand said he was on his way to Piu in March 1996 for the purpose of electioneering when Loi Taufao a member of his family stopped his vehicle. Loi Taufao got on and he appeared to be intoxicated. Loi asked for some money and he then gave him \$20. Nothing was mentioned about the elections.

I accept that the money was given in March and nothing was said by the petitioner about the elections. I have my doubt about the testimony of Loi Taufao. This doubt must be resolved in favour of the petitioner. This allegation must fail.

The second allegation is that on or about the first week of April 1996 the petitioner gave Taamaletoa Mausali \$40 to induce him to vote for the petitioner. Taamaletoa told the Court that the petitioner in the company of Talo Uliuli came to his home at about 9.00 o'clock in the evening and told him of his desire to contest the elections. He said it was in the first week of April but under cross examination he was not sure whether it was in April or March, but he did receive \$40 as confirmed by Perenise Uale and the petitioner himself.

The petitioner does not deny the giving of \$40. He said that during the month of March 1996 he travelled throughout his district to make himself known to electors; telling the electors his desire to run as a candidate and informing the electors of his reasons for running. And as the holder of the title Fuimaono he was expected to give monies to reciprocate the courtesy extended to him by the families. He specifically told the recipients of the monies that the money was

not to buy their votes but they as electors should vote wisely. Before embarking on his election campaign in March 1996 the petitioner obtained legal opinion to the effect that he can safely campaign and conform with custom until the election period commences. He felt he was free and within the law to hand out small amounts of monies to the families he visited as a faaosu to comply with customs and traditions during the period before election period. Election period commenced on the 30th March 1996.

As a consequence the petitioner does not deny the payment of monies in the nine allegations alleged against him in the counter petition. What he denies is firstly that he did so without any corrupt intent to induce the votes of the recipients but simply to comply with custom and secondly he denies that the payments were made not in April but in March 1996.

I accept the evidence of the petitioner that his election campaign was conducted throughout March 1996 before election period commenced. I accept from the evidence that he kept records of his campaign activities and his dates are therefore more accurate than those alleged in the counter petition.

What I do not accept however is that the petitioner should hide behind faulty legal advice to give him a licence to give handouts to electors prior to election and before election period commenced. His Honour Sapolu CJ has dealt adequately with this subject in the recent unreported decision in *Election Petition re Aana Alofi No.3, 26th June 1996 at page 17-18.*

Coming back to the second allegation against the petitioner, I am satisfied

from the evidence that the payment was made in March and the allegation is accordingly amended. I find that the \$40 was given after the petitioner has made known his wishes to run in the election. I am satisfied beyond reasonable doubt that this allegation is proved.

Coming to the third allegation it is alleged that on the 18th April 1996 the petitioner gave \$20 to Maseafa Paea and his wife to induce them to vote for him. Both Toetu Maseafa and her daughter testified that on the night of the 18th April 1996 the petitioner came with Talo Uliuli and Talo requested the support of their family and when support was promised the petitioner gave \$20.

The petitioner admits \$20 was given not on the 18th April 1996 but on the 19th March 1996. I accept the date given by the petitioner. Was the \$20 a faaoso as claimed by the petitioner or a bribe? Given the imminence of the elections and the circumstances surrounding the payment I am of the view the payment of \$20 was a subtle form of bribery by the petitioner. I find the allegation proved.

The fourth and fifth allegations are that the petitioner on the 20th April 1996 gave to Tauveve Loto and his wife \$20 as well as \$20 to Leapagatele Faimafili to induce them to vote for the petitioner.

Tauveve Loto told the Court that the petitioner accompanied by his wife called into his house in the evening and made known his candidacy. The witness was not sure of the date. Again I accept from the evidence of the petitioner that it was the 23rd March 1996 and the allegation is accordingly amended.

Tauveve Loto said after the petitioner talked about the elections, he, Tauveve told the petitioner to leave his request for his family to consider. Samoan cocoa was served by the family of Tauveve and the petitioner gave \$20. Leapagatele Faimafili was sent for a request from the petitioner and upon his arrival he was spoken to about the election and given \$20.

Again the petitioner admits the giving of the monies to the electors but insisted that it was a proper thing to do as the family of Tauveve had displayed customary courtesy. It was therefore customary for him as the holder of the Fuimaono title to reciprocate.

It was Tauveve Loto and his family who extended the hospitality to the petitioner. Yet when Leapagatele arrived he was also told about the elections and given \$20. I have no difficulty in concluding that these allegations are also proved.

The sixth and seventh allegations are that on the 9th April 1996 the petitioner gave Salea Lipena and Taino Tupu \$20 each to induce them to vote for the petitioner.

Salea was not called as a witness but the petitioner himself acknowledged he gave \$20 to Salea and Taino Tupu in March and not April. Again I accept payments were made in March. According to the evidence of Taino Tupu, the petitioner and his wife came to her home and while they were talking about elections they were joined by Salea Lipena. The petitioner then gave them \$20 each. Again the petitioner testified that the monies was for the courtesy

extended to him and the payment was to reciprocate the courtesy extended. These payments were made while the petitioner was electioneering and with elections looming the obvious inference is that the payments were made with the election in mind. If the hospitality was provided by Taino Tupu why was Salea Lipena also given the same amount of money? I am satisfied these allegations have been proved beyond reasonable doubt.

The eighth allegation is that on or about the second week of March the petitioner gave Tamalupevao Faatiuga, Seve Feli, Kereseta Faatiuga and Hamuferi Faatiuga \$5 each to induce each of them to vote for the petitioner. Here again although the petitioner disputes the date he concedes the giving of monies to the people concerned out of respect. As I have rejected his reasons for the giving of the monies I also find here that the intent of the petitioner was to induce the votes of the recipients. I also find this allegation proved.

The ninth allegation is that on the 29th March 1996 the petitioner gave Aniva Asueru \$10 to induce her to vote for the petitioner. No evidence was called to support this allegation but the petitioner in his evidence in chief conceded giving \$10 to Aniva Asueru. I am not satisfied that this allegation has been proved. The name Aniva Asueru does not appear on the electoral roll submitted to the Court by consent of counsels.

The tenth allegation is that on Sunday, the 7th April 1996 the petitioner offered to members of the Utulaelae Methodist Church he will pay their outstanding loan if he succeeds in the elections. My finding of facts on the evidence are :

- (1) The petitioner was invited by one of the matais of the congregation to come to the Sunday toonai.
- (2) The petitioner joined the toonai and contributed one carton ice cream and a 6lb can of corned beef.
- (3) During the toonai Fuimaono Fetalaiga jokingly said to the petitioner that if the petitioner succeeds in the election he should help pay the church outstanding building account.
- (4) The petitioner made no response to the suggestion.

On those finding of facts I find the evidence falls far short of the proof required and the allegation must fail.

The remaining allegations concerns the giving of monies by Talo Uliuli Olano as agent of and committee member of the petitioner to several electors. There are five allegations. The first is that on the 25th April 1996 Talo gave \$5 to Aniva Vili to induce her to vote for the petitioner. Aniva Vili gave evidence that on the night of the 25th April 1996 Talo came to the Women's Committee house. The wife of Talo was at the Committee house with Aniva Vili and Luisa Aeoo. Talo came to accompany his wife home and while he was at the Committee house Talo gave \$5 to Aniva Vili and told her to vote for his candidate. Talo in his own testimony admitted to the giving of the money and telling Aniva to remember his candidate. On those facts I have no difficulty in concluding that the money was given by Talo for the purpose of inducing Aniva to vote for the petitioner.

The second allegation relates to the giving by Talo of \$5 to Miriama Filo

on the 27th March 1996 to induce her to vote for the petitioner. Miriama Filo was required to give \$20 like every other member of her church for the pastor's exams. She said she went to Talo for \$20 but Talo did not have \$20. Her evidence is confirmed by Talo. On the day of the exams Miriama Filo was \$5 short and Talo then gave \$5 to Miriama Filo who is a relative of Talo. On the evidence I am not satisfied that the \$5 was given by Talo for the purpose of inducing her vote for the petitioner. The allegation must fail.

Thirdly it is alleged that on the 25th April 1996 Talo gave Esera Falefitu and Galu Uiese \$5 each to induce them to vote for the petitioner. Esera Falefitu gave evidence that in the early morning of the 25th March 1996 he and Solomona and Galu Uiese went to the house of Talo and Talo gave him and Galu Uiese \$5 each and were urged by Talo to vote for the petitioner. Again Talo confirmed in his evidence giving of monies and here again I have no difficulty in finding the allegation proved.

The fourth allegation is that on the 25th April, Talo gave \$5 to Tauamalupevao Faatiuga in order to vote for the petitioner. Tauamalupevao testified he went to see Talo to discuss family matters and he was counselled by Talo regarding the pending conferment of a family title. He said Talo left with the petitioner when the petitioner arrived and when he returned two hours later Talo gave him \$5. He was also told by Talo that the petitioner had only brought \$150 for distribution. I prefer the evidence of Talo. He frankly admitted giving \$5 and it was not something new for him to give Tauamalupevao monies. He is entitled to the benefit of the doubt and this allegation must also fail.

The last allegation relates to the giving by Talo of \$15 to Vai Fomai and his wife on the 25th April 1996 to induce them to vote for the petitioner. In support of this allegation both Vai Fomai and his wife gave evidence that Talo called into their house on the night before election day gave them \$15 and urged them to vote for the petitioner. Talo confirmed he gave \$15 to Vai Fomai and his wife Faatu Fomai. Faatu Fomai is a registered elector. Talo said he gave \$15 because the petitioner did not visit the Fomai family. The explanation by Talo clearly established beyond reasonable that the purpose of the money was to induce the vote of Faatu Fomai.

Having made my findings that the actions by Talo Uliuli Olano as alleged in allegations 1, 3 and 5 above were done for the purpose of corruptly influencing the votes of those electors, I now turn to consider whether the petitioner knew or authorised Talo to do as he did. The corrupt practises by Talo were committed during the election period and the evidence by Talo is that the petitioner did not give him any money and the petitioner knew nothing about the monies he gave to the electors. I accept the evidence by the petitioner that he was led to believe through legal advice that he was free to campaign provided everything must stop when election period commences. And when the election period commenced the petitioner informed Talo to stop the campaign. The sole purpose of Talo during the campaign and before election period commenced was to make the initial contact with the electors. The evidence clearly established that the giving of monies by Talo to the electors was done without the consent, authority or knowledge of the petitioner and were clearly against the instructions of the petitioner. Accordingly the three allegations must fail.

I declare the election of the respondent void in terms of section 112 of the Electoral Act 1963 and I will report my findings to the Honourable Speaker.

I make no order as to costs.

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JUDGE