

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

MISC. 20443

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.3

BETWEEN:

AFAMASAGA FATU VAILI of  
Fasitootai, a candidate  
for election

Petitioner

A N D:

TOALEPAIALII SIUEVA POSE  
III SALESA of Satapuala,  
a candidate for election

Respondent

Counsel: R S Toailoa for petitioner  
A S Vaai for respondent

Decision: 10 June 1996

---

JUDGMENT OF SAPOLU, CJ

---

This is an electoral proceedings under the provisions of the Electoral Act 1963 concerning an election petition filed by the petitioner against the respondent in respect of the general election held on 26 April 1996. The election petition relates to certain allegations of corrupt practices against the respondent in respect of the election held for the Aana Alofi No.3 territorial

constituency.

At the end of the evidence adduced for the petitioner in support of his petition, counsel for the respondent submitted that some of the allegations in the petition are not precise and the relevant provisions of the Electoral Act 1963 are not specified in the petition. As I understand this submission, it is in effect saying that the election petition is defective as to form. Counsel for the respondent also submitted that the evidence adduced in support of the allegations contained in the election petition do not establish a prima facie case. It is therefore contended that the election petition should be dismissed.

Dealing first with the submission that the petition is defective as to form because some of the allegations are not precise and the relevant provisions of the Electoral Act 1963 are not specified in the petition, I will turn to the relevant provisions of the Electoral Petition Rules 1964. Rule 4 sets out matters which should be contained in an election petition. Rule 5 then provides how the petition should be set out in paragraphs and rule 6 provides that a petition should be set out depending on the relief sought. Rule 7 then provides :

"A petition shall be sufficient if in form 2 or to the like  
"effect".

Now form 2 is to be found in the schedule to the Electoral Petition Rules 1964. It is clear that those parts of form 2 which are relevant to the present election petition do not refer to or require reference in the petition to the relevant provisions of the Act. I am of the view that the present election petition is

in sufficient compliance with the Rules and in particular form 2 in the schedule to the Rules. After due consideration I am also of the view that the allegations contained in the present election petition are sufficiently clear as to what they purport to show. I therefore do not accept the submission which suggests that the election petition is defective as to form.

I come now to the submission of no prima facie case. It must be pointed out that for the purpose of a submission of no prima facie case the Court does not consider whether on the evidence adduced in support of the petition, that evidence has proved the allegations in the petition against the respondent beyond reasonable doubt. The question of whether the evidence adduced for the petitioner has established a prima facie case in respect of the allegations in the election petition is quite different from the question whether the same allegations have been proved beyond reasonable doubt. At this stage of the proceedings the Court is only required to decide whether there is or is not a prima facie case in respect of the allegations if corrupt practices contained in the petition. Both counsel for the petitioner and the respondent are in agreement that the principles which should apply to the determination of a submission of no prima facie case for the purpose of the trial of an election petition should be those principles which apply to a similar submissions made in criminal proceedings.

Now the relevant principles to a submission of no prima facie case in criminal proceedings are set out in the decision of the English Court of Appeal in *R v Galbraith* (1981) 73 Crim. App. R.124 where the Court stated at p.127 :

"How then should the Judge approved a submission of 'no case'?"  
"(1) If there is no evidence that the crime alleged has been  
"committed by the defendant, there is no difficulty. The  
"Judge will of course stop the case. (2) The difficulty  
"arises where there is some evidence but it is of a tenuous  
"character, for example because of inherent weakness or  
"vagueness or because it is inconsistent with other evidence.  
"(a) Where the Judge comes to the conclusion that the prose-  
"cution evidence, taken at its highest, is such that a jury  
"properly directed could not properly convict upon it, it is  
"his duty, upon a submission being made, to stop the case.  
"(b) Where however the prosecution evidence is such that its  
"strength or weakness depends on the view to be taken of a  
"witness's reliability, or other matters which are generally  
"speaking within the province of the jury and where or one  
"possible view of the facts there is evidence upon which a  
"jury could properly come to the conclusion that the defendant  
"is guilty, then the Judge should allow the matter to be tried  
"by the jury.... There will of course, as always in this branch  
"of the law, be borderline cases. They can safely be left to  
"the discretion of the Judge".

With those principles in mind and also bearing in mind at the same time that these are election petition proceedings tried before Judge alone without a jury or panel of assessors. I now turn to consider the submission of no prima facie case in respect of the allegations in the election petition.

In respect of the allegation in paragraph 5(a) of the election which states that the respondent in the morning of polling day, 26 April 1996 gave \$100 to the elector Veta Afesulu of Fasitootai for the purpose of inducing her and members of her family to vote for the respondent, counsel for the respondent submitted that there was no prima facie case for two reasons. Firstly, there is no evidence that the said Veta Afesulu is an elector or that she voted. Secondly, there is no evidence of inducement of members of Veta Afesulu's family.

As to the first reason given for the submission, I rule that there is no sufficient evidence to show on a prima facie basis that the said Veta Afesulu is

an elector. She stated in her oral testimony that she is an elector for the Aana Alofi No.3 territorial constituency and that she also voted in the 1991 general election. That is enough to establish on a prima facie basis that Veta Afesulu is an elector for the Aana Alofi No.3 territorial constituency. There is also no evidence to contradict that part of her testimony. It is also unnecessary for the present allegation for bribery whether she actually voted or not. It is sufficient to establish that she was an elector.

Out of extra caution, I have also referred to the electoral roll for the Aana Alofi No.3 territorial constituency for the general election held on 26 April 1996. That electoral roll was produced by consent at the commencement of the case for the petitioner. It shows the name of Veta Afesulu as elector No.70 on the roll. I therefore rule that there is a prima facie case in respect of the bribery allegation with regard to the elector Veta Afesulu.

As for the allegation of bribery concerning Veta Afesulu's family, I have decided after due consideration of the relevant circumstances that the evidence for the petitioner does not establish that part of the allegation in paragraph 5(a) of the petition on a prima facie basis. It is therefore dismissed.

As to the allegation in paragraph 5(b) of the petition that the respondent on the afternoon of 25 April 1996 gave \$100 to the elector Taimata Faleaana of Satuimalufilufi for the purpose of inducing the said elector and his family to vote for the respondent, I find that there is a prima facie case in respect of the said Taimata Faleaana. He said in his testimony that he is an elector for the Aana Alofi No.3 territorial constituency and there was no weakness or

vagueness about that part of his evidence. Neither is there any other evidence that is inconsistent with that part of Taimata Faleaana's evidence. I do not accept the submission by counsel for the respondent that what Taimata Faleaana said about being an elector is not sufficient. I think what must be borne in mind here is that the Court is not at this stage concerned with whether the allegation has been proved beyond reasonable doubt but whether the allegation on the evidence for the petitioner has been established on a prima facie basis.

Out of extra caution, however, I have also referred to the relevant electoral roll. The name of Taimata Faleaana appears as elector number 2053 on that roll. So there is a prima facie case in respect of the said elector Taimata Faleaana. Here again it is not necessary for the purpose of the allegation whether he actually voted or not.

As to that part of the allegation concerning inducement of the family of Taimata Faleaana to vote for the respondent, I have decided that the evidence for the petitioner does not establish that part of the allegation in paragraph 5(b) on a prima facie basis. That part is therefore dismissed.

In respect of the allegation in paragraph 5(c) of the petition which says that the respondent on Friday, 26 April 1996 gave \$80 to one Vine Valuniu for the purpose of inducing the said elector to vote for the respondent, it was also submitted for the respondent that the affidavit testimony of the said Vine Valuniu and his wife that they are electors for the Aana Alofi No.3 territorial constituency are not sufficient to establish on a prima facie basis that they are such electors. I do not agree. There was no weakness or vagueness in the

evidence of Vine Valuniu that they were electors for the Aana Alofi No.3 territorial constituency. Neither is that part of their affidavit testimony inconsistent with any other evidence for the petitioner. The name of Vine Valuniu also appears in the relevant electoral roll as elector number 2669.

I find that there is a prima facie case in respect of the allegation contained in paragraph 5(c) of the petition.

In respect of the allegations contained in paragraph 6 of the petition, the allegations in paragraphs 6(a) and 6(b) can be dealt with together. The essence of the submission of no prima facie case in respect of paragraphs 6(a) and 6(b) is that the allegations in those paragraphs relate specifically to one Sefulu Aukuso but there is no proof that Sefulu Aukuso is an elector or that he actually voted. I do not agree with this submission. The clear testimony of Sefulu Aukuso is that he is an elector for the Aana Alofi No.3 territorial constituency. There was no weakness or vagueness about that evidence. Neither is there evidence inconsistent with any other evidence so far. I find that it has been established on a prima facie basis that Sefulu Aukuso is an elector for the Aana Alofi No.3 territorial constituency.

Out of extra caution I have referred to the electoral roll for the Aana Alofi No.3 territorial constituency. The name of Sefulu Aukuso as elector number 1745 on that roll. I am also of the clear view that the evidence of Sefulu Aukuso shows that he actually voted in the recent general election at Satapuala at about 12 noon on polling day. So there is a prima facie case in respect of the allegations in paragraphs 6(a) and 6(c) of the petition.

As for paragraph 6(b) of the petition which was amended by consent, it does not contain any allegation of corrupt practice but simply makes certain factual allegations. I will leave paragraph 6(b) as it is as it is not really affected by the present submission of no prima facie case.

In respect of the allegations in paragraph 7 of the petition that the respondent on 25 April 1996 gave bottles of spirits and soft drinks to Latai Tomasi and her husband to induce them to vote for the respondent, the submission of no prima facie case is again made on the basis that there is insufficient evidence to show that Latai is an elector and there is no evidence that her husband is an elector. Insofar as the submission relates to the husband of Latai Tomasi, I accept that the evidence by Latai Tomasi was that her husband is not an elector for the Aana Alofi No.3 territorial constituency. So there is no prima facie case on that basis. But the testimony by Latai Tomasi is that she is an elector for the Aana Alofi No.3 territorial constituency. Her name also appears as elector number 2392 on the roll for the same territorial constituency.

Coming now to the allegations in paragraph 8(a) of the petition, I am satisfied that some of the members of the Fasitootai rugby club which held a dance at the Satapuala Beach Resort on 13 April 1996 are electors for the Aana Alofi No.3 territorial constituency. These include the witnesses Aana Poutoa and Iopu Suamili who both testified that they are members of the Fasitootai rugby club which held a fundraising dance at the Satapuala Beach Resort on 13 April 1996 when the respondent announced that he would pay for the costs of the place where the dance was held as well as the costs of the band. Aana Poutoa and Iopu Suamili also testified that they are electors for the Aana Alofi No.3 territorial



constituency. The electoral roll for the same constituency in the recent general election also shows the name of Aana Poutoa as elector number 1517 and the name of Iopu Suamili as elector number 1989. So the submission for the respondent that there is no prima facie case in respect of the allegations in paragraph 8(a) of the petition because none of the members of the Fasitootai rugby club has been proved to be an elector is not supported by the evidence. It is therefore not accepted.

In respect of the allegation in paragraph 8(b)(i) of the petition, I find on the evidence of the witnesses Naomi Taufano Chan Ben and Toleafoa Vaitoelau Faisaovale that there is a prima facie case that a committee member of the respondent did collect from the elector Iliili Tala her identification card on 15 April 1996. The evidence of Iliili Tala who has left the country is not essential to establish a prima facie case.

Likewise I find that there is a prima facie case in respect of the allegation in paragraph 8(b)(ii) regarding the collection of identification cards by a committee member for the respondent from electors prior to the election. Whether there is proof beyond reasonable doubt that 20 identification cards were so collected is a matter to be decided later.

Finally it was submitted for the respondent that there is no prima facie case in respect of the allegation in paragraph 8(b)(iii) of the petition. That allegation says that in the beginning of April, Fa Rimoni, a committee member for the respondent collected from one Maimoa Faamoe of Faleatiu and her husband six identification cards from members of her family for the purpose of inducing them

to vote for the respondent. The ground of the submission is that there is no evidence that Maimoa Faamoe, her husband and their four children were electors.

However Maimoa Faamoe and her husband Paufai Faamoe both testified that they are electors for the Aana Alofi No.3 territorial constituency. They also testified that their three children Puava, Tavita and Auala are all electors for the same constituency. Their fourth child who also had an identification card did not vote in the recent general election because he was in prison. I am of the clear view that those evidence establish on a prima facie basis that Maimoa Faamoe, her husband Paufai Faamoe and their said four children are all electors for the Aana Alofi No.3 territorial constituency. The electoral roll for the same constituency also shows that name of Maimoa Faamoe as elector number 299, Paufai Faamoe as elector number 301, Auala Faamoe as elector number 298, Tavita Paufai as elector number 1431 and Puava Paufai as elector number 1432.

So the evidence does not support the submission of no prima facie case. Accordingly the submission is denied.

In all then, and except for those parts of the allegations in the petition which have been dismissed, I find that there is a prima facie case in respect of the remainder of the allegations.

*TFM Sapele*  
.....  
CHIEF JUSTICE