

IN THE SUPREME COURT OF SAMOA

HELD AT APIA

IN THE MATTER of the Declaratory
Judgments Act 1988

BETWEEN: FUIMAONO SUAFOA
LAUTASI of Faleasiu,
Member of Parliament

Applicant

A N D: MASE TOIA ALAMA
Registrar of Electors and
Voters

First Respondent

A N D: TOLEAFOA FAAFISI,
Speaker of the Legislative
Assembly

Second Respondent

Counsel: A A V S Vaai for the Applicant
D B Heather, Attorney General for the Respondents

Hearing: 25 June 1998

Judgment:

RESERVED JUDGMENT OF MORAN J

In the general election of April 1996 the Applicant was elected a Member of
Parliament for the Territorial Constituency of Aana Alofi No.1.

On 25 November 1997 he was involved in a motor vehicle accident which caused the death of Mathew Seiuli.

On 30 March 1998 in the Magistrates Court at Apia the Applicant was convicted on three charges arising from the accident, namely, negligent driving causing death, failing to stop and ascertain injury, and failing to report an accident.

The Applicant appealed his conviction to the Supreme Court. On 15 May 1998 that appeal was dismissed.

By letter dated 25 May 1998 the Second Respondent informed the Applicant that his Parliamentary seat had become vacant on 30 March 1998 the date of his conviction of the above offences.

In the meantime the First and Second Respondents had stopped payment of the Applicant's Parliamentary and Under Secretary salaries with effect from 30 March 1998.

The Respondents justify their action by invoking section 10 Electoral Act 1963, the relevant portion of which provides as follows:

"10 How vacancies created - a Member of Parliament..... shall be disqualified from holding his seat -

(e) if he is convicted in Samoa..... of a crime punishable by death or by imprisonment for a term of two years or upwards

The Applicant contends that he has not been convicted of a crime. He has only been convicted of a traffic offence.

He seeks the following remedies:

1. A declaration that the actions of the First and Second Respondents in stopping payment of his Parliamentary salary and other entitlements and declaring his Parliamentary membership to be vacant are unlawful.
2. An injunction directing the Respondents to pay his Parliamentary salary and entitlements and to refrain from conducting a by-election in his Territorial Constituency

PRELIMINARY MATTERS

The Applicant has filed a supplementary affidavit of 17 June 1998 containing material designed to show that his application should be promptly heard. His application is being promptly heard and so the content of the supplementary affidavit is irrelevant to the present proceedings and will not be read in relation thereto.

The named First Respondent is no longer the Registrar of Electors and Voters. By consent he is replaced by Soialo David Fong, Chief Electoral Officer and Registrar of Electors and Voters.

SUBSTANTIVE ISSUE

Has the Applicant been convicted of a crime punishable by imprisonment for a term of two years or upwards?

Neither the term "crime" nor the term "offence" is defined in the Electoral Act 1963.

The transgression of failing to report an accident is not punishable by imprisonment for a term of two years or upwards (s44 (2) & (5) and s72A Road Traffic Ordinance 1960). The conviction for that offence may therefore be ignored for present purposes.

Negligent driving causing death is a transgression against s39A Road Traffic Ordinance 1960:

39A. Negligent driving causing death - every person commit *an offence* and shall be liable on conviction to imprisonment for a term not exceeding five years, also a fine not exceeding \$2,000.00 who recklessly or negligently drives or rides any vehicle and thereby causes bodily injury to or the death of any person. (emphasis added)

Failing to stop and ascertain injury is proscribed by s44 (1) and (3) Road Traffic Ordinance 1960

Sub section 1 creates the obligation to stop and ascertain injury

Sub section 3 provides:

- (3) every driver who fails to comply with any obligation imposed on him by sub section (1) of this section in any case where any other person is injured in the accident commits *a crime* and is liable to imprisonment for a term not exceeding five years or to a fine not exceeding \$2,000.00. (emphasis added)

Again, neither the term "crime" nor the term "offence" is defined by the Road Traffic Ordinance 1960.

The term "crime" is defined by s2 Crimes Ordinance 1961:

"crime" means an offence for which anyone can be punished *under this ordinance*. (emphasis added)

The term "offence" is not defined in the Crimes Ordinance 1961

That term is, however, defined by s2 Criminal Procedure Act 1972

"offence" means any act or a omission for which under any enactment any person can be punished other than solely by means of a civil proceeding

Mr Vaai submits that the transgressions of which the Applicant stands convicted are "offences" within the meaning of the Criminal Procedure Act 1972 but they are not "crimes" within the meaning of the Crimes Ordinance 1961. They are not "crimes"

because they are not offences for which the Applicant could be punished under the Crimes Ordinance 1961.

The Attorney General submits that the term "crime" as used in the Electoral Act 1963 is not to be so narrowly construed. Rather the term is to be given its ordinary meaning in order to give effect to the object of the Electoral Act 1963, namely, to ensure that people who transgress the law in a serious way are disqualified from representing the citizens of Samoa.

Ordinary Meaning Of "Crime"

I accept Miss Heather's submission that the ordinary meaning of "crime" is wider than the definition contained in s2 Crimes Ordinance 1961.

The term "crime" is extensively defined in both Strouds Words Judicially Defined and in Butterworths Words and Phrases Judicially Defined.

The following are extracts from the latter:

Ordinarily a crime is a wrong which affects the security or well-being of the public generally so that the public has an interest in its suppression.....

A crime, or misdemeanor, is an act committed, or omitted, in violation of a public law, either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors; which, properly speaking, are mere synonymous terms: though, in

common usage, the word, "crimes", is made to denote such offences as are of a deeper and more atrocious dye; while smaller faults, and omissions of less consequence, are comprised under the gentler name of 'misdemeanors' only.

The distinction of public wrongs from private, of crimes and misdemeanors from civil injuries, seems principally to consist in this; that, private wrongs, or civil injuries, are an infringement or privation of the civil rights which belong to individuals, considered merely as individuals; public wrongs, or crimes and misdemeanors, are a breach and violation of the public rights and duties, due to the whole community, considered as a community, in its social aggregate capacity.

From those quoted extracts I derive the following propositions:

1. A crime includes any action proscribed by law for which the transgressor is answerable to the State rather than to the individual whom he has wronged.
2. Where the term "offence" is used as distinct from the term "crime" it means a violation of public law of a less serious type. "Offence" in this sense is synonymous with "misdemeanour". Thus the term "crime" as generally defined comprehends "crimes" and "offences".

I hold that, for present purposes, "crime" encompasses any violation of public law for which the perpetrator is answerable to the State.

s5 (i) Acts Interpretation Act 1974

Where an issue of statutory interpretation arises, recourse should first be had to the general rules of construction contained in the Acts Interpretation Act 1974 and in particular the rule set out s5 (i):

Every Act, and every provision or enactment thereof, shall be deemed remedial, whether its immediate purport is to direct the doing of anything Parliament deems to be for the public good, or to prevent or punish the doing of anything it deems contrary to the public good, and shall accordingly receive such fair, large, and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment according to its true intent, meaning, and spirit:

I accept Miss Heather's submission that the object of the Electoral Act 1963 is to ensure that persons guilty of seriously transgressing the law are not to represent the citizens of Samoa.

That this is so may be gauged from the standards set by s5(6) Electoral Act 1963 for the qualification of candidates for election:

(5) A person shall be disqualified for being a candidate or being elected as a Member of

Parliament if he:

- (a) Is an undischarged bankrupt; or
- (b) Has been convicted in Western Samoa or in American Samoa of an offence punishable by death or by imprisonment for a term of 2 years or upwards, within

the immediately preceding 4 years after the offence * or has been convicted in Western Samoa of a corrupt practice; or

(c) If of unsound mind and is subject to an order of medical custody made under the Mental Health Ordinance 1961.

(* the words "after the offence" seem to be redundant).

These standards are reinforced by s10 Electoral Act 1963 which provides for the disqualification of Members once elected:

s10 How vacancies created - The seat of a Member of Parliament shall become vacant on the occurrence of any of the events specified in subclauses (a), (b) and (c) of clause (2) of Article 46 of the Constitution, and in addition he shall be disqualified from holding his seat:.....

(d) If he becomes a bankrupt, or

(e) If he is convicted in Western Samoa or in American Samoa of a crime punishable by death or by imprisonment for a term of 2 years or upwards, or has been convicted in Western Samoa of a corrupt practice, or is reported by the Supreme Court in its report on the trial of an election petition to have been proved guilty of a corrupt practice; or

(h) If he becomes of unsound mind and subject to an order of medical custody made under the Mental Health Ordinance 1961; or

(i) If being a Member representing a constituency he ceases to be qualified to be a candidate to represent that constituency, or if being a Member representing the individual voters he ceases to be qualified to be a candidate to represent them; or

(j) If while he is a Member of Parliament he has sexual intercourse with any person other than his spouse by valid marriage; or

(k) If while he is a Member of Parliament he is guilty of conduct unbecoming a Member of Parliament.

(l) If he is proved to the satisfaction of a Committee of the Legislative Assembly to have acted for commission or other reward as agent on behalf of the owner or for any other person having an interest in any land for the purpose of securing the purchase or acquisition of that land by the Government.

The object of the Electoral Act to ensure that persons guilty of seriously transgressing the law do not represent the citizens of Samoa is best achieved if the term "crime" in s10 (e) is given its broad ordinary meaning - ie a violation of public law for which the perpetrator is answerable to the State.

It follows that the two violations of the Road Traffic Ordinance 1960 of which the Applicant was convicted on 30 March 1998 are "crimes" within the meaning of s10(e) Electoral Act 1963 and that the actions of the Respondents in declaring the Parliamentary Membership of the Applicant vacant and in stopping the payment of his Parliamentary salary and other entitlements, both with effect from 30 March 1998, were lawful actions.

"Offence"/"Crime" Used Without Distinction In The Electoral Act 1963

The interpretation of the term "crime" arrived at by applying s5(i) Acts Interpretation Act 1974 is reinforced by the apparent fact that the terms "crime" and

“offence” are used without distinction in the Electoral Act 1963 (as indeed they appear to be used in the Road Traffic Ordinance 1960).

s5 (5)(b) Electoral Act 1963 as to the qualification of candidates for election and s10(e) as to the disqualification of members once elected, are expressed in very similar terms. Both are directed against serious transgressions of the law punishable by death or by imprisonment for a term of two years or upwards.

s5 calls such transgressions “offences” while s10 calls them “crimes”.

There is no apparent reason for this use of different terminology and I therefore conclude that the terms “offence” and “crime” are used in the Electoral Act 1963 indiscriminately and synonymously.

It would be absurd if a candidate were disqualified from election because of a conviction for negligent driving causing death but could not be disqualified from Membership of Parliament once elected, if that conviction post dated his election.

s10(i) Electoral Act 1963

In any event the Applicant’s fate is sealed by the provisions of s10(i) Electoral Act 1963 which have been recited above.

Upon being convicted of negligent driving causing death and of failing to stop and ascertain injury the Applicant ceased to be qualified to be a candidate by virtue s5

(5)(b) Electoral Act 1963 in that he was convicted of "*an offence*" punishable by death or by imprisonment for a term of two years or upwards."

By virtue of s10(i) that loss of qualification as a candidate resulted in the Applicant's being disqualified from holding his seat.

If the Respondents were not justified in invoking s10 (e) of the Act they were certainly entitled to invoke s10 (i)

The Applicant's motion for declaratory judgment and injunction is refused.

If the Attorney General seeks costs, leave is reserved for written submissions to be filed and served within seven days with a further seven days being allowed for the Applicant to file submissions in reply.



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Moran J