

**IN THE HIGH COURT OF THE COOK ISLANDS**  
**HELD AT AUCKLAND**  
**(CIVIL DIVISION)**

**MISC NO. 185/94**

**IN THE MATTER** of Part VI of the Electoral  
Act 1966

**BETWEEN** **IAVETA ARTHUR** of  
Auckland, Self-employed

**AND** **JOSEPH WILLIAMS** of  
Auckland, Medical  
Practitioner

**First Respondent**

**AND** **TERE MATAIO** of  
Rarotonga, Chief Electoral  
Officer

**Second Respondent**

**AND** **TAGGI TANGIMETUA**,  
Returning Officer for the  
Overseas Constituency

**Third Respondent**

Mr Mitchell for the Petitioner  
Mr Puna for the First Respondent  
Mr Priestley for the Second and Third Respondents

Date of Judgment : 10 October 1994

**JUDGMENT OF DILLON J.**

I have been asked to fix the costs related to two Electoral Petitions filed following the General Election held in the Cook Islands on 25 March 1994. These two Petitions relate to the overseas constituency and were heard in Auckland on 27 and 28 April 1994. The first Petition was by Mr Iaveta Arthur, the unsuccessful candidate against the successful candidate Dr Joseph Williams. Then in reply Dr Williams filed a cross petition against Mr Arthur.

The cross petition was heard first and in a seven page Judgment the challenge by Dr Williams

was disallowed. Evidence was then called to support and to oppose the petition filed by Mr Arthur. That petition was also disallowed and Dr Williams confirmed as the successful candidate for the overseas constituency. Counsel have now filed submissions in support of their claims for costs and disbursements.

### Principles

It is a generally accepted principle that a successful party is entitled to costs - that is that costs should follow the event and reflect the result. However that generalisation is still subject to the Court exercising a discretion where the circumstances of any particular case warrant a departure from the general rule.

### Scale

The exercise of the Court's discretion was discussed by Hardie Boys J. in Morton v Douglas Homes Limited (No. 2) (1984) 2 NZLR 620, a case which took twelve days. Four actions were heard together. In one \$6,500 costs were awarded as follows :

"Issue and service of Writ	250
Preparation for trial	1,500
Trial	4,500
Discovery and inspection	150
Interlocutory motion	100
	<hr/>
	6,500"

For the other three actions a total of \$9,420 was awarded under the same headings.

The case of Waiatarua Action Group v Minister of State Owned Enterprises (1990) 2 P.R.N.Z. 447 is also helpful. In that case Eichelbaum C.J. exercised his discretion and fixed costs on a Solicitor/client basis holding that in resorting to the scale, even if applied on a generous basis, would not produce an equitable result. There were six Respondents in proceedings which were withdrawn prior to trial. The Second and Third Respondents categorised their costs involving a total of 71 days; other Respondents' claims were for a lesser involvement, e.g. the First Respondent claimed \$10,000; the Second and Third Respondent

\$60,000 plus disbursements and expenses. The decision of the Court was as follows :

"First Respondent	\$5,000
Second and Third Respondents	8,000
Fourth Respondent	5,000
Sixth Respondent	1,000"

The Court of Appeal sessions ~~that~~<sup>just</sup> concluded in Rarotonga provide a further guide in the matter of fixing costs. Costs of \$2,500 and \$1,500 were awarded in respect of one day appeals; while costs of \$5,000 and \$4,000 were awarded where the two appeals took two days.

With that background I shall now proceed to consider the submissions by the Solicitor-General on behalf of the Second and Third Respondents and the Petitioner; and the two submissions by the First Respondent.

**The Second and Third Respondents**

The Solicitor-General has claimed as follows :

"Legal Counsel - John Priestly	\$10,688.80
Travel - Raro/Auk/Raro	3,528.00
Accommodation	4,650.00
Meals & Incidental Allowances	3,435.00
Freight - New Zealand/Rarotonga	372.12
Photocopies of Documents for Court purposes	100.00
Hirage of Van in New Zealand - est.	1,056.00
Communication - fax, phone - est.	400.00
	_____
Total Expenses incurred for the Overseas Petition	\$24,209.92 _____ "

The claim for travel would indicate that three staff were involved. However accommodation at say \$120 per day would indicate a stay of 13 days for three people. This is excessive. I assess accommodation for three people for five days as follows :

$$5 \times 120 \times 3 = \$1,800$$

For meals I assess this amount as follows :

$$5 \times 50 \times 3 = \$750$$

and substitute those figures. The claims for freight, photocopies, and communication stand at a total of \$872.12. The hire of a van is unsupported by any detail and is therefore disallowed.

This brings the total disbursements to \$6,950.12.

The claim for Counsel is \$10,668.80.

I must here digress to consider a twelve page report by the Deputy Chief Electoral Officer dated 21 March 1994 and addressed to the Chief Electoral Officer. This was filed by Mr Mitchell as part of his submissions. I do not intend to refer to this report in detail but suffice to identify just some of the statements contained in it.

"After scrutinising the many application forms completed or witness by several of the Electoral Officers those who were recommended by CJP it leaves no alternative but to conclude that these forms were tampered ..... Similar situations occurred for those applications done for the Australia."

"During the follow-up enquiries several interesting issues were revealed : -

- (a) Many applicants claimed that their applications were completed by persons who they have no knowledge and they were asked to sign the form.
- (b) Some applicants claimed that those who visited them for the enrolment were not those appointed.
- (c) Some claims that the witness his or her applications was never present when application ever made.
- (d) Some claimed that they were surprised that their names appeared on the roll in spite of their statement that they are not eligible.
- (e) Similar feed back was received by telephone from some of the applicants who were enrolled in Australia."

"One notable incident occurred immediately before the close of the Supplementary Roll. Dr Williams delivered more than 170 application forms to be added to the roll. These completed applications were mostly those done in Australia by the Cook Islands Party.

The Registrar in charge could not nor in the position to satisfy her pursuant to section 12 subsection 2 instead put them through the systems.

As the process of keying to the computer continues several applications were found to be duplicated and some of the applicants were either already on the main roll or already not eligible to enrol."

"Some of those objected to as soon as the notice of objection delivered either declared voluntary that they are not qualified or contact the Registrar by telephone admitting that they are not eligible.

In this regards the objections were upheld."

"Others said that inspite of their objection to enroll even to the point of submitting passports as proved of not eligibility they were encouraged to sign the form with the statement from those assisting to complete the form - let the Office (meaning) Electoral Office to disprove that they are not qualified."

This most serious state of affairs of widespread irregularities was not reported to the Court. Individual incidents were indeed investigated in the objection process prior to the election. But neither at that time nor at the hearing of the petition was the substance of the report that is now available referred to by Counsel for the Second and Third Respondent. The Solicitor-General on behalf of the Chief Electoral Officer has not replied to this report and the reliance made on it by Mr Mitchell.

The question now arises should there be an order for Solicitors costs as claimed when information vital to the Petitioner and of possible relevance to the Court has been withheld. I say withheld advisedly as I make no allegation of imlicity against Counsel who appeared.

I am required to exercise my discretion in matters of fixing costs. It would seem unduly harsh on the Petitioner to order legal costs against him in proceedings which he initiated and which were disallowed, when important information which was within the knowledge of the party now seeking costs, was withheld from him and the Courts. That information may or may not have affected the final decision. That, however, is not the point. In all the circumstances I do not propose to award costs but award the disbursement of \$6,950.12 as previously calculated. The \$5,000 security held by the Registrar shall be paid forthwith towards settlement of that amount.

**The First Respondent**

The claim by the First Respondent is as follows :

"Legal Counsel - Henry Puna	\$6,250.00
Airfares - RAR/AKL/RAR	1,138.00
Accommodation	195.00
Transport for Counsel in New Zealand	475.00
Meals and Incidentals	455.00
	_____
TOTAL	\$8,510.00
	_____"

The claim for accommodation seems reasonable; the claim for meals seems exorbitant. It would appear that Counsel spent more time eating than sleeping. However they tend to balance out and are allowed. Transport in Auckland at \$475 seems unreasonable without further explanation and is therefore disallowed. Disbursements therefore are fixed at \$1,788.

Counsel's fee I fix at \$5,000, similar to the highest award made by the Court of Appeal in the recent sittings in Rarotonga.

Costs and disbursements are therefore fixed at a total of \$6,788.00, payable by Mr Arthur.

**The Petitioner**

The Petitioner was successful on the cross petition filed by the First Respondent. He is entitled to Counsel's fee at \$5,000 payable by the First Respondent who initiated the proceedings.

**Summary**

Costs and disbursements ordered to the First Respondent	6,788.00
Costs payable by the First Respondent to the Petitioner	5,000.00
	_____
Balance	1,788.00

<b>Costs and disbursements ordered to the Second and Third Respondents</b>	<u>6,950.12</u>
<b>Security to be paid to the Second and Third Respondents</b>	<u>5,000.00</u>
<b>Balance</b>	<u>1,950.12</u>

<b>Payable by Mr Arthur</b>	1,788.00
	1,950.12
	<u>\$3,738.12</u>

*Dillon J.*

\_\_\_\_\_  
Dillon J.