

IN THE HIGH COURT OF THE COOK ISLANDS  
HELD AT RAROTONGA  
(Civil Division)

NO. OA 1/2002

IN THE MATTER OF . The Declaratory Judgments  
Act 1994

AND

IN THE MATTER OF The Rarotonga Local  
Government Act 1997

AND

IN THE MATTER OF William Pera Mayoral  
candidate for the Vaka Puaikura Election

Applicant

Mr D Miles for Applicant  
Mr Vaka for Elections Administrator  
Mrs J Browne for Mr T Heather

Reasons for Judgment of Chief Justice  
Dated 21<sup>st</sup> March 2002

1. This was an application for a declaration that the applicant be declared the successful candidate for the mayoral seat in the Vaka Puaikura election held on 21 February 2002. It was made just before the holding of a bye-election on 20 March 2002. It was therefor treated with urgency and after a short conference on the 19<sup>th</sup> I adjourned the matter to a hearing on the 20<sup>th</sup>. The parties in the time available provided by the Elections Administrator (the Administrator) some further information and by all the parties submissions on the facts and the law. At a hearing on the 20<sup>th</sup> I dismissed the application, reserved costs and said that I would give my reasons for my decision in writing.
2. Both the applicant and Mr Heather were nominated for the position of mayor or Konitara Futura for the elections for the Vaka in question. I was informed nominations closed on 8 February and were made public about the 12<sup>th</sup>. By letter dated 14 February addressed to the Administrator but not received by him until late in the afternoon of Friday the 15<sup>th</sup> a question was raised as to the qualification of Mr Heather to stand as a candidate. A further letter dated 19 February was received by the Administrator, which also raised the question of the qualifications

of Mr Heather. The question relates to the requirement in s. 27 of the Act that the qualification of the candidate for Konitara Tutara is continual residence in the Vaka for not less than 6 months prior to nomination. It seems that Mr Heather in December 2001 had raised with the Administrator a question of his eligibility and was told that it was his responsibility to decide if he was qualified.

3. On 19 February the Administrator sought advice from the Crown Law Office. As a result he decided to continue and conclude the election and to deal with the question raised by way of inquiry as if it was a disputed election. The reasons which led him to do this was the imminence of the election and the absence of any provision in the Act dealing with any challenge before hand; though the Act contains detailed provisions for disputed elections in s. 27C.
4. In the election Mr Heather received 643 votes and the Applicant received 170 votes. The Administrator did not proceed to follow the steps required to obtain the completion of the Warrant of Appointment under s. 27D but proceeded to make his inquiry under s. 27C as for a disputed election. This included a meeting at which the Applicant was represented by Counsel (not Mr Miles). There is no suggestion that the Administrator's course of conduct including his decision to treat the matter as a disputed election was challenged. The Administrator concluded that Mr Heather was not qualified by residence. The Administrator determined (in the words of s.27C(1)(c)) to uphold the dispute, to declare the election void and to "cause a new election to be held within 14 days of the declaration" That was the bye-election held on 20 March. The Applicant and Mr Heather's son stood as candidates for the Konitara Tutara.
5. The Applicant's case is, simply but I hope accurately put, that Mr Heather was not qualified, could not be treated as a candidate and so there being only one qualified candidate, the Applicant, he should be treated as nominated unopposed. As a result the unopposed candidate is entitled to be and ought to have been declared elected.
6. The fact is that both were nominated. Both were published as candidates and a ballot carried out in which both appeared on the ballot papers. There is no process set out in the Act for challenge of the electors or candidates' qualifications before the election. Nor is there any provision for the cancellation or postponement of the election by the Administrator or any other person. There is however the provision for disputing an election, s.27C. That contains in ss. (1)(a) a time of 14 days after the appointment by the Queen's Representative before which the notification of the dispute is to be given to the Administrator. That does not mean that a dispute can arise only after the election but only provides a cut-off point for raising a dispute. An election may be disputed prospectively. In the absence of any other process for challenging eligibility and qualifications of electors and candidates I conclude that the Administrator was correct to treat the letters he received as notifications of disputes to be dealt with under s. 27C.
7. In light of that conclusion the Administrator was bound, on his finding of lack of qualification, to require a new election and within the period of 14 days.
8. A finding that the Applicant is entitled to election as unopposed is contrary to the facts and to the wishes of the electors. It is possible and even likely that if the matter had been brought to attention sooner Mr Heather might have, as he has done, found another candidate in his place. To declare the Applicant as Konitara Tutara would contradict the express wish of the electors or a substantial body of them. As has been noted the disenfranchisement of electors is to be avoided and can be a consideration in the Court's decision on electoral issues. It cannot be



ignored here. But I think the law is clear and that in cases such as this the only recourse is by way of disputed election and if necessary a new election.

9. For these reasons I dismissed the application. Counsel may make submissions on costs.

10. I add some comment about the electoral procedure. The responsibility is on the applicant to be an elector or election candidate to make sure that he or she is correctly qualified. That is particularly the case with the candidate. The qualifications are tolerably clear in the Act. Persons who intend to take on the responsibility of local government ought to make themselves familiar with the Act which affects the election and its process. Mistakes as here are expensive to correct and are easily avoided. I understand that the forms for nomination and perhaps also for entry on the roll do not specify the qualifications required by the Act. Such matter, especially if requiring a direct answer or even statutory declaration by the nominee or nominator, would at least alert the person to the requirement and demand consideration. It might not be too much to ask the Administrator or returning officer to seek clarification from the candidate or nominator before accepting the nomination.

F. M. Greg. C.J.