

**IN THE HIGH COURT OF THE COOK ISLANDS**  
**HELD AT RAROTONGA**  
**MISC.84/2004**

**IN THE MATTER**  
of the Cook Islands Electoral Act 2004  
and the General Elections held on  
7 September 2004

**AND**

**IN THE MATTER**  
of a Petition by **TIKI MATAPO** of Titikaveka, Candidate

Mr Norman George	for Petitioner
Mr Charles Little	for ROBERT WIGMORE Candidate
Mr John McFadzien	for Chief Electoral Officer

**Friday 10<sup>th</sup> December 2004**

**DECISION OF THE COURT**

The Petitioner, TIKI MATAPO, the unsuccessful candidate seeking the Titikaveka seat in the recent general election has filed a petition alleging three reasons why the Court should intervene and disqualify the successful candidate ROBERT WIGMORE.

Firstly, that there are sundry voters who for various reasons should have their votes disallowed.

Secondly, that there was corrupt treating on election day by Robert Wigmore in that he provided electors with refreshments in a marquee at his home; the polling was 3-4 hundred metres from the Wigmore home.

Thirdly, that Robert Wigmore directly or indirectly by himself or by others on his behalf committed the electoral offence of bribery. (These grounds were amended at the commencement of the hearing to “Bribery by improper use of government money”.)

#### Disallowed Votes

The Court delivered an interim decision on the matter on 9<sup>th</sup> December 2004.

#### Treating

Two witnesses gave evidence on this matter; Mama Turi Atuatika gave evidence that she was uplifted from her home by a young woman who apparently was one Tapita Engu, driven around the island ending up at the home of Robert Wigmore she was offered a cup of milo and a sandwich this before she had voted, having drunk the milo and eaten half the sandwich she was shown the voting booth – she voted and was returned to her home by the same young woman; this witness was adamant she did not want to travel around the island or go to the Wigmore property. The second witness Mata Tavai was uplifted from his home and taken to the Wigmore home, he asked for and was given a drink of milo then proceeded on to the booth and voted. He saw Robert Wigmore but did not speak to him before voting.

Mr Wigmore giving evidence stated that he had put up a tarpaulin around to the rear of his home and refreshments were provided. This was usual practice around Rarotonga and he had seen the marquee of his opponent, the Petitioner, at Titikaveka being used for the same purpose. He stated that his electorate workers had been clearly instructed that only after a person had voted should refreshments be offered. Mr Wigmore did not know of his campaign workers who the young woman was that uplifted Mrs Atuatika. He said he saw Mrs Atuatika and spoke to her.

Mr George argues that the Atuatika incident “oozes deception everywhere” – the voter was “tricked and treated” and Mr Wigmore should have known who had driven Mrs Atuatika.

Mr Little argued that the whole Atuatika incident was rather bizarre; the voter was upset with the driver taking her around the island – there was no talk of voting – she asked the same driver to take her home.

Dealing with Mr Tavai Mr Little pointed out that the voter asked for a drink of milo and there was no talk of his voting for Mr Wigmore. Mr Little's primary legal submission is that it has not been proven that Robert Wigmore provided food and drink for the purpose of corruptly procuring himself to be elected.

I am of the view that if the drivers of the vehicles taking these voters to the polling booth had been called to give evidence the Court would have been in a better position to evaluate what happened, neither were.

I am not prepared to find that Robert Wigmore provided the drinks and sandwich with the purpose of corruptly influencing those voters. He provided, like the Petitioner, refreshments to be partaken of by voters/supporters and like Mr Tiki Matapo instructed his campaign workers that refreshments were available to people after they had voted.

I reiterate that the culpability or otherwise of Mr Wigmore would have been clarified if the evidence of the drivers had been available, this evidence not being available I cannot speculate as to what motivated Tapita Engu or the other driver to call in at the Wigmore home before Mrs Atuatika and Mr Tavai had voted.

I find the evidence adduced on this issue insufficient to establish corrupt treating.

Bribery by improper use of Government funds

There are three prongs in this attack.

- (i) Bribery by having provided roads to two homes sealed at no cost to the home owners.
- (ii) Bribery by having electric power lines erected to two homes at no cost to the home owners.

- (iii) Bribery by approaching Cabinet for \$100,000 for waste management project (the amount was amended to \$40,000 during the hearing).

At the outset I mention two sketches of Robert Wigmore that have been pressed upon me. From Mr George I am asked to see a “godfather like” corrupt Minister, pulling the levers of Government powers influencing fellow Ministers and sundry public servants to manipulate and carry out the various projects with the view of enhancing Mr Wigmore’s election chances.

The picture painted by Mr Little is that of an industrious Minister quietly going about his duties amongst which is a proper attention to the problems of his electorate.

#### The Road Sealing

There is no dispute that the sealing to the Wearing and Teura homes, the substance of the complaint, was carried out what is in issue is whether the work was in the usual course of projects carried out by the Works Department or was there an underlying political motive that caused this work to be done.

Mr George points out that this work was carried out in the three months preceding the election; that the way things operate in the Works Department is that once the Minister (Robert Wigmore) gave authority or seal dug up roads those below did not need to keep returning to the Minister’s Office for further approvals. There was John Manuel the Minister’s Field Officer who kept in touch with what was happening. He places significance on the letter that Mrs Wearing wrote thanking the Minister. He emphasizes the \$24,000 and \$3,000 sealing costs as an inducement to the home owners benefiting; effectively a bribe to secure their votes. The whole operation was deviously planned and subtly applied to protect the Minister from public exposure but the recipients “got the message” and wouldn’t be mistaken as to who their benefactor was.

Mr Little submitted that the Minister had no idea when the road was sealed, there were other sections that benefited from the new road – the general public used the road – the Wearings enquired in 2002 about sealing the road. The sealing timetable depended upon

completion of water works that excavated parts of the road - the water works were completed in June 2004. The decision as to which roads are sealed was the province of Mr Herman though the Wearing road was not approved by him. The Minister had visited the Wearing property advising that post water works, sealing would be carried out.

In relation to Mr Teura's drive Mr Little referred to the evidence before the Court of how that came to be sealed.

The substance of his submission is that in relation to the particular sealing complained of, the Minister played an insignificant part, this work was carried out in the usual way without political consideration being taken into account.

The evidence before me on this sealing project involving Robert Wigmore is he has as Minister of Works pursued a policy of sealing roads throughout Rarotonga. He would like to see all roads sealed in time. He also detailed a policy whereby when water works entailed excavating roads his department would repair and seal the roads upon completion of the water works. The evidence showed that the Minister did not concern himself with the day to day implementation of these policies. Mr Manuel his Field Officer was the conduit between field operations and Minister's Office. There is no evidence before the Court contradicting the role of the Minister as outlined.

Moving to the actual sealing Mr Te Pakura Works Co-ordinator gave evidence that he had told Mr Wearing in February that sealing would wait for water works completion. This witness believed that the works was covered in the estimates and in May he indicated to Robert Wigmore that when this sealing was done people would talk; he said the Minister replied that talk wouldn't cause him to die. Mr Te Pakura was adamant that the decision to seal, and when to seal, the Wearing road was his and there was no external or political pressure on him to do it. The water works were completed in June fine weather dictated an August start on re-construction and sealing because the road entailed steep grades and failure to seal would result, when heavy rains occasioned, in wash outs.

This witness is aware of the policy to seal all roads that are used by the public – approximately 80% of island roads now complete. There does not appear to be a distinction between private and public roads insofar as the sealing programme is concerned.

The evidence given by William Heather Junior regarding the sealing of the Teura drive is that after sealing the road to the Wearings there was some 300 litres of tar left. This was below the point in the tank whereby it could be re-heated and if not used at the time would solidify and cause problems with blocked equipment. On his own initiative without consulting either his superior in Works or Mr Teura he sealed the drive – some 35 metres – to the value of \$3,000.

I am asked by Mr George to find on the facts outlined above the stealthy manouvreing of Robert Wigmore pressuring those involved to authorize and carry out this sealing always with a view to electoral advantage.

Having seen the witnesses I am convinced that both Mr Te Pakura and Mr Heather made their decisions based on good works practice considerations not political pressure. The Works Co-ordinator, because he knew heavy rain would wash out road formation, Works were obliged to do resealing following the water works and notwithstanding no approval by his superior, Mr Herman, caused the sealing of the Wearing Road to be completed. Mr Heather, because of the possible blocking up of plant with cold seal decided to use the 300 litres sensibly rather than dispose of it.

I find the involvement of Robert Wigmore in formulating the policies outlined above and leaving it to his subordinates in the Ministry to implement, is a proper exercise of ministerial functions; nowhere is there evidence of improper interference or even the subtle pressure Mr George intimates. The sealing was first mooted in 2002 – the policy of road upgrade after water works excavation was in place long before the 2004 elections and unless I find (without evidence) that the Works Department intentionally held off

completion of the water works until June 004 to ensure the road be sealed immediately preceding the elections I cannot accept the Petitioner's argument.

I find that there was no bribery or any other impropriety on the part of Robert Wigmore causing or influencing the sealing of the road to the Wearing home and the drive to Mr Teura's home.

#### Erection of Power Lines

The allegation in the Petition is that Robert Wigmore arranged for the installation of 300 metres of power lines to ensure that Tereapii Mareta had power to his home and that he promised Mata Tavai power; both were not expected to pay for their power.

Mr George argues that there was no reason for the home owners to receive free lines to their homes and notwithstanding Mr Wigmore not appearing as the instigator of the grants from the Social Responsibility Funds held by the Ministry of Works for this very purpose, he was the presence behind what developed and therefore he must be culpable. Mr George suggests that Mr Tapi Taio was given the hurry up to authorize the payment to the Power Authority. This he argues was evidence of corruption.

Mr Little in reply argues that the provision of electric power lines was not connected to the elections that Mr Wigmore did not make the decision to provide the power lines. Mr Little argues there is no evidence to support the various matters necessary to prove culpability on the part of Mr Wigmore; he points out that the power lines were erected some six months ago.

The facts in this matter are not seriously contested – the lines were erected after Mr Tapi Taio the Minister of Finance had arranged the authorization for payment out of the Social Responsibility Fund. It appeared from the evidence that once the Power Company (Te Aponga Uira O Tumutevarovaro) decided and applied for assistance from the Social Responsibility Fund was desirable, they applied to the Minister of Finance; it was not an uncommon procedure, they had a pro forma letter that was used in these requests. The

evidence is that the Minister of Finance after prodding by Robert Wigmore or his agent made the necessary request. Mr Taio mentioned that he was often being chased up by his colleagues to action these requests.

The explanation given that the 300 metre line was essential to complete the circuit in that area and was necessary to ensure the voltage was kept as high as was necessary.

The grant to Mr Mata Tavai was explained as a usual one because the fund was available to assist people who could not afford the expense of power lines; Mr Tavai was of this category.

I accept the explanations and reject the suggestion that Mr Wigmore "bribed" the recipients of these power lines by assigning the social responsibility money with a view to inducing these persons to vote for him. I am of the view that any involvement of Mr Wigmore or his ministerial offices was reasonable and pursuant to his normally expected duties as the Titikaveka Member of Parliament.

I find that Robert Wigmore did not corruptly bribe any one in this power line matter.

#### Waste Management Bribery

From 2003 through to 2004 complaints of eye infections occurring after people used or bathed in the lagoons fronting the Titikaveka electorate area were becoming common. The general public in the area were becoming concerned and publicity mounted to the extent that the Prime Minister, other Ministers and Government officials attended a public meeting at the Kent Hall in Titikaveka on 21 June 2004 to discuss pollution by the various pig farms in the Titikaveka area. After the meeting a ban was placed on swimming within 200 metres of the Akapua Stream.

Previous Government action had resulted in overseas scientists being consulted as to water quality and health problems with a view to identifying the source of the problem.



A task force had been put in place and one aspect that was mentioned was the effect of waste from warm blooded animals. This turned the focus towards the many piggeries in the Titikaveka area particularly as some were discharging waste directly into adjacent streams, these streams flowing into the lagoon.

The outcome of the meeting was Dr Woonton Prime Minister publicly announced that Mr Tom Wichman a local consultant had been commissioned by the Government to look into the pig waste issue checking the location and size of piggeries in Titikaveka, Tikioki and Vaimaanga areas. Water quality in the lagoon and other sites around Rarotonga was being monitored samples being sent to New Zealand for testing.

Mr Wichman contended that some piggeries needed digesters and he proceeded without Government finance to erect a digester on the property of Walter Marearai. The Government was concerned by what was happening and authorized Mr Wichman to proceed with the erection of digesters where needed to process the pig waste; to this end the Minister of Finance in a memo to Cabinet requested a \$40,000 transfer of appropriation from the M.O.W. Social Responsibility Fund to fund the erection of digester. The \$40,000 was transferred from the \$120,000 allocated to "Te Puka Septic Tanks", each was to cost in the vicinity of \$6,000. These digesters were to be supplied at no cost to the piggery owner.

It is this transfer of funds for this project and the disposal of same that the Petitioner relies upon in his allegation of bribery of the piggery owners to gain their vote.

Mr George says there was no emergency declared and the whole effort of Government was to assist Mr Wigmore's electoral chances and thus he is guilty of bribery.

Mr George infers that the whole digester scheme was created by Mr Wigmore and his Cabinet Colleagues to "inject money for pig farmers". He goes on to submit that providing these free digesters only to Titikaveka electors/pig farmers who did not ask for this is political bribery.

Mr Little argues that what has been alleged does not establish bribery in terms of S.88 of the Electoral Act 2004 ("the Act"). He argues that the Petitioner has not adduced evidence to the required standard in law to justify a finding in his favour. He argues that the provision of these digesters was not "in connection with any election" as provided in S.88 of the Act. He further suggests that the provision of digesters was in connection to a public outcry relating to the pollution of the streams and lagoon by pig waste. Dealing with the request to Cabinet to transfer the \$40,000 was at the behest of the Minister of Finance Teremoana Taio not Robert Wigmore.

I have carefully weighed up the submissions of counsel as well as the evidence before the court.

In reviewing the totality of the evidence I have come to the conclusion that Robert Wigmore alone did not cause the building of the digesters by instigating the transfer of the \$40,000 or the commissioning of Mr Wichman to build them.

The evidence before me dealing with this public health issue does not establish the pig waste has or had any connection to the health/eye problems; this is confirmed as late as 25<sup>th</sup> September (see report on piggeries Cook Islands News Exhibit "F" Mr Ata Herman's evidence Exhibit "J" produced to this Court on 12/10/04). Having found no connection other than general acceptance that animal waste causes pollution I ask myself why the concerted effort to get these digesters built in the period leading up to the election. To answer this question I make the following observations. The health problem had been in evidence since 2003 but it was much closer to the elections when some Titikaveka people engendered publicity. This resulted in a committee getting underway in Government and the attendance of the Prime Minister, Deputy Prime Minister and three members of Cabinet at a meeting in Titikaveka where piggery owners were told that Government would take whatever steps were needed to deal with the waste problem. The end result of this was the digester scheme. The evidence before me demonstrates the Government and Mr Wigmore were under pressure on this issue.

I am of the view that the actions of the Government was a response to the pressure and publicity about the health/water problems. However the absence of proper identification of the cause of the problems means there was nothing to justify the spending of \$40,000 on the digesters. There was no credible explanation given for this spending. It follows that there may have been another reason for the spending. I believe that the spending of the \$40,000 was to lessen the pressure and adverse publicity which could have impacted on a very marginal seat. I note that the \$40,000 was not approved for transfer until late July. The elections were some six weeks later. I believe this cynical use of power to be one of the very corruptions that S.88 of the Act requires this Court to address.

S.88 of the Act provides:

“Every person commits the offence of bribery who in connection with any election:-

- (a) directly or indirectly gives or offers to any elector any money or valuable consideration or any office of employment in order to induce the elector to vote or refrain from voting; or
- (b) directly or indirectly makes any gift or offer to any person in order to induce that person to procure or endeavour to procure the return of any candidate or the vote of any elector; or
- (c) upon or in consequence of any such gift or offer, procures or endeavours to procure the return of any candidate or the vote of any elector; ...”

Ss.(d) and (e) are not repeated here as these subsections are not germane to this enquiry.

Having found that the transfer and spending of the \$40,000 was to effectively shore up support for Mr Wigmore in the forthcoming elections I obviously do not agree with Mr Little that there was no “connection” to the election.

The persons committing the offence were those Government Members involved in the transfer of the \$40,000 as well the direction that it was to be spent to provide the digesters for the six piggery owners. This group includes Mr Wigmore.

In terms of ss(b) and ss(c) of s.88 of the Act I find there was an offer or gift of the money necessary to erect the digesters to each of the six recipients and that such gift or offer in terms of s.88(c) was an endeavour to procure the return of ROBERT WIGMORE to the Titikaveka seat.

I believe it was intended that the spending on the digesters project was to have effect on more than the six recipients; my findings above demonstrate my belief that it was aimed at the wider voting public in Titikaveka to ease the pressure and to show the electorate as a whole that the Government, and by inference their Member of Parliament, was doing something.

This being my view I find that the provision and disposition of the \$40,000 paying for the erection of digesters for six piggery owners was part and parcel of corrupt bribery insofar as it affected each of the recipients of free digesters. This was a corrupt practice committed in relation to the election for the purpose of promoting and procuring the election of ROBERT WIGMORE and could have affected the whole electorate. It so extensively prevailed that it is reasonable to suppose the result of the election was effected in terms of s.98(2).

I also find in terms of s.98(1) as a Member of Cabinet ROBERT WIGMORE who was elected on 7 September 2004 in the Titikaveka constituency committed a corrupt practice in the election by being a party to the bribing of the six persons named in the petitions.

The Election of ROBERT WIGMORE is declared by the Court to be void.

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H.K. Hingston