

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT PUKAPUKA AND RAROTONGA
(ELECTORAL COURT)

MISC NO. 115/2010
[PUKAPUKA]

IN THE MATTER of Section 92 of the Electoral Act 2004
AND
IN THE MATTER of the election of the Member of Parliament
of the Cook Islands held on Wednesday
17 November 2010
BETWEEN VAI PEUA
Petitioner
AND TEKII LAZARO
First Respondent
AND TAGGY TANGIMETUA
Second Respondent
AND MARK TEREI SHORT
Third Respondent
AND TEWOE LUKA
Fourth Respondent

Hearing: 14 February 2011 (at Pukapuka)
16 and 17 February 2011 (at Rarotonga)

Counsel: Mrs T Browne for Petitioner
Mr P Lynch for First Respondent
Mr H Matysik for Second, Third and Fourth Respondents

Judgment: 17 February 2011

JUDGMENT OF C NICHOLSON J

T Browne, Browne Harvey & Associates, Avarua, Rarotonga (law@browneharvey.co.ck)
P Lynch, Paul Lynch Consulting Ltd, Ngatangia Rarotonga (blvilla1@oyster.net.ck)
H Matysik, Little & Matysik PC, Maraerenga, Avarua, Rarotonga (heinz@lawyers.co.ck)

[1] The General Election was held on 17 November 2010. On 26 November 2010 the First Respondent, Tekii Lazaro, was declared as the successful candidate duly elected as Member of Parliament for the Pukapuka-Nassau Constituency. He had 88 votes. The Petitioner, Tamaiti Vai Peua, received 84 votes, four votes less. The other candidate, Tai Ravarua, received 77 votes.

[2] Mr Peua filed an Election Petition on 3 December 2010 and an Amended Petition on 15 December 2010.

[3] In his Amended Petition Mr Peua stated three grounds. First, that the votes of seven named people should be disallowed because each was disqualified under the Electoral Act 2004 ("the Act"). Secondly, that eight named people were removed from the Roll without notice of such removal being given to each as required by the Act. Third, that Mr Lazaro committed general acts of bribery and specific acts of bribery in relation to three named people.

[4] On 22 December 2010, Mr Lazaro filed notice of intention to oppose the Amended Petition and a Counter-Petition.

[5] In his Counter Petition Mr Lazaro stated three grounds. First, that the votes of nine named electors should be disallowed as each was not qualified. Secondly, that Mr Peua was guilty of bribery in respect of three electors, that the Island Secretary was guilty of bribery and that two other people interfered with electors on the day of the Election.

[6] On 11 February 2011, Mr Lazaro filed an application to strike out the Amended Petition on the grounds that it did not comply with the provisions of the Act, as it did not specify the relief sought. On that day Mr Peua filed notice of opposition to that application, and an application to amend the Amended Petition by inclusion of a prayer that it be determined:

- a) that the said Tekii Lazaro was not duly elected; and/or

- b) that the said Election was void; and/or
- c) that Tamaiti Vai Peua ought to have been so declared; and/or
- d) such other Orders that the Court deems fit.

[7] The hearing started on Pukapuka on Monday 14 February 2011. Ten witnesses, including the Fourth Respondent, Ms Luka, gave oral evidence there. In addition, numerous affidavits and documents were submitted by the parties as evidence.

[8] At the start of the hearing both Mr Peua and Mr Lazaro withdrew the grounds alleging voting by disqualified people, and Mr Peua amended the alleged specific acts of bribery to relate to only one person. Mr Lazaro did not pursue his Counter Petition in any respect.

[9] The hearing resumed on Rarotonga on Wednesday 16 February 2011. Mr Lazaro and his wife gave oral evidence. Before the hearing concluded earlier today, further documents were produced as evidence and all counsel made final submissions. Mrs Browne also applied for further amendment of the Amended Petition to plead that 86 people had been removed from the Electoral Roll and that notice as required by the Act had not been given to any of these people.

[10] For the reasons which I will state as soon as possible after today, I have made the following decisions and Orders. The Court will give a certificate to the Chief Electoral Officer pursuant to s 104 of the Act. A copy of that Order is attached.

[11] I grant Mr Peua's application to amend the Amended Petition dated 11 February 2011 and mentioned in [6] hereof.

[12] I dismiss Mr Lazaro's application of 11 February 2011 to strike out the Amended Petition as referred to in paragraph [6] hereof.

[13] I grant the application of 17 February 2011 for further amendment of the Amended Petition as referred to in paragraph [9] hereof.

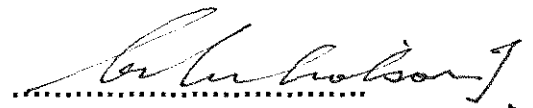
[14] I dismiss the Counter Petition referred to in paragraph [5] hereof.

[15] I find that Mr Lazaro committed a corrupt practice at the Election, namely bribery, and that accordingly his election was void.

[16] I find that the removal by the Registrar of Electors from the Electoral Roll of the names of 86 persons was invalid because the Registrar did not notify each such person that his or her name had been so removed as required by s 20 of the Act.

[17] The Court will forthwith certify in writing to the Chief Electoral Officer pursuant to s 104 of the Act that it has determined that the Member, Tekii Lazaro, whose election is complained of was not duly elected and that the election in respect of the Pukapuka-Nassau Constituency was void.

[18] Costs are reserved.



C M Nicholson J