

EX PARTE : SIONE HAVEA KOLI
 " " : 'AHOFITU MAKA
 " " : FINAU VAIPULU

(Civil Application : Stuart C. J. Nuku'alofa, 30th September, 1940).

Mandamus — Public Service Examinations — Production of Birth certificate — Same law for all classes — Ultra vires — Constitution Clause 4 — 17 Government Gazette 1938 P. 135.

The three applicants moved for a mandamus to compel the Premier and the relevant authorities to accept their applications for permission to sit for the Public Service Examination although they were unable to submit birth certificates with their applications as required by the notice published in the Government Gazette. The applications were heard together.

HELD. That in the case of an applicant who, through no fault of his own could not produce a birth certificate the notice was ultra vires Clause 4 of the Constitution as discriminating against classes and that therefore a mandamus should issue ordering the acceptance of the applicants as candidates for the examination.

STUART C. J. It is ordered in all three cases that the applicants be admitted for examination despite non-compliance with the Notice.

The Court finds as a fact that the three applicants were born on 2nd April, 1922, June 7th, 1922 and 12th December, 1922 respectively, that in all three cases there never were birth registrations.

The Court is of the opinion.

1. That an affidavit by the responsible parent made before the Registrar of Birth and Deaths verifying that fact is a sufficient compliance with the Notice. This is strictly limited to cases where previous search has been made and the facts are found. This is the case in all these three cases.

2. To the extent to which the Notices demands imperatively a certificate and nothing but a certificate from candidates who for no fault of their own are unregistered, the Notice differentiates against a class of persons in no ways to blame and in no way to be submitted to any unnecessary penalty for the acts or defaults of others: to that extent the Notice (although good in the case of all persons who can obtain a certificate and negligently fail so to do) is ultra vires the power of the Act and is bad as in conflict with Section 4 of the Constitution of Tonga. No law shall be enacted for one class and not for another. It is clear that if this notice purports to make the unregistered outcasts from educational facilities it makes a class and then differentiates against it.

It is of course clear that this judgment does not enfranchise the unregistered to defy the Notice, but permits them to avoid its disqualification in the manner adopted by the three applicants.