

Fasi v Pohiva

Supreme Court, Nuku'alofa

Martin CJ

Civil case No. 20/1990

26 April to 11 May 1990

- 10 *Election – offences – bribery – corrupt and illegal practices – threatening voters*
Election petition – burden and standard of proof
Evidence – burden and standard of proof in election petitions
Statutes – application of English statutes – Representation of the People Act 1983 (U.K.) applicable in Tonga

20 The petitioner petitioned for declarations that the election of the respondent as people's representative for the district of Tongatapu was void on the ground that the respondent had committed the offences of bribery, corrupt and illegal practices, and threatening voters.

HELD, dismissing the petition:

1. A petitioner must prove the allegations in an election petition to a standard of strict proof, which is higher than the standard of proof in an ordinary civil case;
2. To constitute bribery a gift may be made either to identifiable voters or to voters generally, but it must be made with the intention of persuading people to vote for the candidate; such intention had not been proved by the petitioner in respect of the payments made by the respondent;
3. Corrupt and illegal practices are not defined by the Electoral Act 1989 and the definition of these terms contained in the Representation of the People Act 1983 (U.K.) should be applied in accordance with the Civil Law Act; applying these definitions, bribery and threatening voters constitute corrupt practice, and there are many forms of illegal practice of which the only one relevant to the present proceedings was making a false statement;
4. Making a false statement does not constitute an illegal practice under the Representation of the People Act 1983 (U.K.) and, by virtue of the Civil Law Act, under the Electoral Act 1989, unless (i) it is a false statement about another candidate, and (ii) the person making it did not have reasonable grounds for believing, and in fact did not believe, that it was true; the petitioner had not proved either of these requirements;
5. A statement criticising a decision of a court, even if constituting contempt of court, does not constitute an illegal practice;

6. Making a threat to an elector does not constitute an electoral offence unless it was made in an attempt to influence the elector's vote at an election; the petitioner had not proved that a threat was made to a voter, or that it was made in an attempt to influence that elector's vote.

N.B. The petitioner appealed and the decision of the Court of Appeal is reported elsewhere in this volume.

Statutes considered:

- Electoral Act 1989
Civil Law Act
Representation of the People Act 1983 (U.K.)

Counsel for the petitioner: Mr W. C. Edwards

The respondent appeared in person

Judgment

Samuela 'Akilisi Pohiva was a candidate for the district of Tongatapu at the general election held on 15th February 1990. He received 9441 votes and was elected people's representative No 1 for that district.

Tevita Manu Fasi was registered voter at that election. He petitions for declarations against Mr Pohiva;

1. that he committed bribery in the election;
2. that he committed corrupt and illegal practices in the election;
3. that he committed the offence of threatening voters; and consequently
4. that his election was null and void.

He says that Mr Pohiva committed bribery in two ways;

- (i) by giving money for scholarships to the Ministry of Education, and
- (ii) by returning part of his parliamentary allowances to Treasury, in each case with the intention of persuading voters to vote for him.

The corrupt or illegal practices alleged in the pleadings are;

- (i) bribery;
- (ii) misrepresentation of facts; and
- (iii) threatening voters.

(i) the bribery is as previously alleged;

(ii) The misrepresentation of facts alleged is that in order to persuade voters to vote for him, he published incorrect information on various occasions;

- (a) he stated in the Times of Tonga on 25 January 1990, that he had repaid certain money to the Treasury, when in fact it remained his money;
- (b) in the same statement, he exaggerated the sums which he had repaid;

- (c) his agents represented to voters that he had been chosen by God—supposedly suggesting that he was supported by some divine influence. (Wisely, this allegation was not pursued).
- (d) he stated in the Kele'a of January 1990 that the Minister of Finance had failed in his attempt to have an action brought by Mr Pohiva against him struck out; whereas in fact he had succeeded. This, it is said, suggested that the Minister of Finance was still under investigation by the court at the instance of Mr Pohiva;
- (e) he said in the same edition that the decision of the court was wrong and biased – suggesting favouritism by the court.
- (iii) two instances of threats to voters were alleged in the petition. One that he had threatened Paula Bloomfield, was withdrawn. There remains an allegation that Mr Pohiva "... did threaten and blackmail ... Sione Palesi ... (a senior officer at the Ministry of Lands) ... with prosecution for maladministration and bribery if he refused to give (him) an interview and a statement ..." which was false but favourable to his campaign.

Mr Pohiva denies that he acted improperly as alleged, or at all.

The law is contained in the Electoral Act 1989 ("the Act").

The burden and standard of proof.

Subject to one exception, the petitioner must prove what he alleges and in an election petition he must meet the standard of "strick proof". This is a higher standard of proof than in an ordinary civil case. Before an allegation can be found proved, the court must be sure, or almost sure, that it is true.

The exception is contained in section 21(3) of the Act. This states :

"(3) ... any money given ... to any person ... within 3 months of any election by ... a candidate, shall be deemed to have been given ... for the purpose of influencing the vote, unless the contrary be proved."

It is for the Respondent to prove that a gift made within 3 months of the election was innocent; any other gift is presumed innocent until the petitioner proves otherwise.

A. BRIBERY

The Law

Section 21 of the Act makes it illegal to buy or to try to buy votes in an election. The relevant part of that section states :

"21. (1) Every person commits the offence of bribery who, directly or indirectly ...

- (a) gives any money ... to or for any elector, ... or to or for any other person, in order to induce any elector to vote or refrain from voting;

(2) ... a reference to giving money ... includes a reference to ... promising ... any money ..."

By section 32, where a candidate is found on the trial of an election petition to have been guilty of bribery his election must be declared void.

The Respondent argued that, as a matter of law, the alleged gifts could not amount to bribes within the meaning of the Act. He says that when the Act refers to a gift " ... to or for any elector ... or to or for any other person ... " it means to some particular elector or electors or other person; and in this case the gift was made to government and not to an elector or person. He also says that when the Act says " ... in order to induce any elector to vote ... " this must also mean some particular elector or electors; and no such elector has been identified.

I disagree. The gift may be made to any person or body; and there does not have to be an intention to influence any identifiable elector or electors. It suffices if there is an intention to influence voters generally. The words " ... any elector ... " mean what they say - any one amongst all the persons entitled to vote at the election.

When a gift has been made by a candidate, the court has to determine why he made it - what his intention was. If it was made with the intention of persuading people to vote for him, it was a bribe. If it was made with some other intention, it was not a bribe. A gift which a candidate would have made anyway may incidentally increase his popularity; but unless his predominant intention was to influence voters, such a gift is permitted. His intention must be ascertained at the time when the gift was made. What happened afterwards may give an indication of what he intended but a gift which was innocent at the time when it was made cannot be converted into a bribe because the donor later claims some credit for it.

I have been referred to a great deal of authority on the question of charitable gifts by candidates. I have read it, but I do not find it helpful. These cases simply apply the basic principle that if the intention behind a gift is not to influence votes, it is not a bribe.

The Facts

1. The Background.

Allowances paid to MPs are determined by Parliament. Since at least 1986, Mr Pohiva has frequently and publicly criticised the amounts parliamentarians have awarded themselves, saying that they are too high. He was elected an MP himself in 1987, and became entitled to those same payments. He says that he did not take all that he was entitled to draw because he regarded some of the allowances as excessive and immoral.

2. The payments and repayments.

(a) 1987

For the 1987 session of Parliament Mr Pohiva became entitled to salary and allowances totalling \$29,096.89. of this sum he drew \$23,459.56, leaving \$5,637.33 which he did not draw. On 6 June 1988 the House approved a further payment of a per diem allowance of \$3,094.05 for travelling on parliamentary duties in

November 1987. He did not draw this either. The total amount which was undrawn in respect of the 1987 session was \$8,731.38.

On 27 June 1988 Mr Pohiva wrote to the Accountant General about the sums not drawn for 1987 (Ex 10), saying.

"Because I do not wish to draw these sums I request you to take that money and add it to the revenue for 1988/89. But credit it to Vote 15, Ministry of Education, Sub-vote 8, 6. 66(a)." (This is the Ministry of Education sub-vote for scholarships).

210 The letter to the Accountant General bears a note in the margin, added by an unknown person in the Ministry of Finance: "Sorry, we cannot do that." Their procedures required that the money be paid out to the person entitled to it, and then repaid to the Treasury for the purpose specified. Mr Pohiva was not told this at the time.

On 26 July 1988 he wrote to the Minister of Education (Ex 4) asking him to accept the money for scholarship purposes.

220 The offer presented the Minister with a problem. He remembered a previous action in this court in which the offer of scholarships had been held to be bribery. He wanted to make sure that it was proper to accept the money. He wrote a personal note of thanks to Mr Pohiva (Ex 5), and sought advice from Crown Law, which was not received until December 1988. As a result of that advice he decided to accept the money on condition that the gift was not publicised.

No formal letter was sent to Mr Pohiva about the money. The Minister of Education saw him at a faikava after Parliament opened in 1989 and told him that the gift should remain a secret in view of the possible allegation of bribery. As will be seen, this stipulation was made too late. News of the gift was already known in some quarters.

230 On 8th June 1989 the Accountant General issued a cheque for \$5,637.33 payable to "S. A. Pohiva (payable to Education Dept)". That was sent to the Minister of Education with a letter (Ex 6), stating:

"Re: Mr S. 'Akilisi Pohiva, Member of Parliament

1. "In accordance with the above named person's request, Government of Tonga cheque no 155287 of 8 June 1989 for \$5,637.33 is sent herewith to be credited to the Tonga Government Scholarship fund.
2. The said cheque represents the total for earned Parliamentary allowances which Mr Pohiva did not draw in 1987 but had requested per his letter of 26 July 1988 to you, and copied to the Accountant General, that it be transferred to your Ministry to be used for scholarship purposes.
3. Mr Pohiva has informed me that he had spoken to you about the matter and you have agreed."

240 On 19 June 1989 the Accountant General drew a further cheque for \$3,000 payable to "S. A. Pohiva (payable Ministry of Education)", which he sent to the Minister of Education stating that the payment was.

1. "... a further contribution from the above named person to the Tonga Government Scholarship Fund.
2. This cheque represents part of Mr Pohiva's 1988 parliamentary allowance.

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which he had requested us to transfer to your Ministry."

In fact, it represented the bulk of his 1987 per diem allowance for travelling on parliamentary duties in November 1987. There remained a small balance of \$95.04. Mr Pohiva asked that this sum be paid to him and he was given a cheque for that amount on 19 June 1989.

(b) 1988

For the 1988 session Mr Pohiva became entitled to salary and allowances totalling \$29,799.47. He treated this money differently. He drew all of it, but then repaid a sum equivalent to the allowances which he did not wish to keep. He explained that in 1987 he simply did not accept the money and asked the pay clerk to take the money back; but by 1988 it had occurred to him that the money could be drawn by anyone who signed his name. He said, "clerks in Treasury could be tempted." He therefore decided to draw the money and refund it, ensuring that the transaction was fully documented.

"The effect of this procedure, according to the Accountant General Siasoi Nakao, was that Mr Pohiva's entitlement was treated as satisfied, when the money was returned it was treated as revenue, and Mr Pohiva could not come along later and ask for it to be paid out to him.

Mr Pohiva produced 5 receipts for such refunds, totalling \$6,120.24. Perusal of receipt books produced by an officer from the Ministry of Finance revealed another for \$1,097.92. The receipts produced total \$7,218.16. Mr Pohiva claims to have repaid more, and says that there is another receipt somewhere. I am not prepared to speculate. In the absence of such a receipt I find that the total repaid in respect of the 1988 session was \$7,218.16.

(c) 1989

The Evidence does not show how much Mr Pohiva became entitled to for the 1989 session. Whatever it was, he drew the lot, but returned a sum equivalent to those allowances he did not wish to keep.

Receipts have been produced for the 1989 session totalling \$4,095.30. That sum includes repayment of \$2,137.16 in respect of the first 50% of a salary increase awarded to members. He says that a similar sum remains owing to him in respect of the other 50%, which will be paid later; and he has already told the Treasury that he will refund that. He claims that the total amount refunded for 1989 is therefore \$6,232.46. That may be his intention, but the second 50% of the salary increase has not yet been paid. At present the sum repaid is \$4,095.30.

3. *The publicity.*

A gift cannot operate as a bribe if no one knows about it. The petitioner says that Mr Pohiva took active steps to ensure that people should know what he had done; and that this shows that at the time when he refunded the money he did so with the intention of using the payments to his advantage in the election. It is said that he obtained publicity in printed publications, at public meetings, and in one particular instance by a schoolteacher acting as his agent.

(a) *The publications.*

The first publication to reveal what Mr Pohiva was doing was the paper edited by himself, the Kele'a. The edition for May-June 1989 (Ex 19), contained a table showing every cent paid out to each Minister, nobles' representative and people's

representative during the 1988 session of Parliament. This showed that he had worked 132 hours overtime for which he would have been entitled to draw pay for an extra 120 days; and that in fact he had drawn nothing for overtime, or for overseas travelling allowances. The table demonstrated that he had drawn only \$21,595.78, less than any other MP and much less than many of them.

Mr Pohiva says that this was not published to advertise what he had done. He acknowledged that it had that effect, but insisted that it was done primarily as part of the efforts of the peoples' representatives to reduce government spending, and to emphasise what he regarded as excessive payments to certain MPs. He said "All these motives were there ... (but) ... the main reason was to ensure that each MP knew how much he was paid." I find that hard to believe. We were told that each MP is given a statement at the end of each session showing exactly what he has been paid. But I do accept that his primary purpose was to advertise what he thought were excessive payments to MPs. In so far as it also advertised what Mr Pohiva had done, that is one matter to take into account when assessing the amount and effect of publicity obtained by him.

The next publication to mention the repayments was the magazine *Matangi Tonga* for September-December 1989 (Ex 18). This contains an article about Mr Pohiva which covers various matters, in the course of which it states that he had "... refused to collect all the 127 days' overtime payment of over \$8,000 he was awarded during the 1988 session." Mr Pohiva said that the editor telephoned him to ask about that money, and he told him to enquire at the Treasury. There was no evidence to the contrary, and I find that Mr Pohiva did not seek this publicity.

The next printed publicity was an advertisement published by Mr Pohiva in the newspaper *Times of Tonga* on 25th January 1990 (Ex 1), and repeated in the next edition on 1st February 1990 (Ex 23). This poses various statements which Mr Pohiva says had been made against him and gives his replies. Some allegations are general, for example that he is a communist, or that he does not go to church and does not believe in God (all of which he denies). One questions the fact that he opposed the pay rise which Members of Parliament awarded themselves but nevertheless accepted it. His answer to that is that he returned the extra money, and other money totalling nearly \$22,000. Another poses that there is no proof that he had returned part of his parliamentary pay; and the answer gives details of the relevant cheques and receipts. The advertisement concludes:

"Who is the person fit to represent you in Parliament? ..."

There is no reference to scholarships, but on the face of it this is blatant publicity of the fact that he had returned money to government, in order to persuade people to vote for him. Unless there is a satisfactory explanation, this strongly suggests that his intention when he refunded the money was to try to influence votes.

Mr Pohiva's explanation.

Mr Pohiva denies this. He admitted that he wanted the public to know about the repayment; but insisted that he was forced into publishing this advertisement by certain untrue stories which were being circulated about him. One of those stories, he says, related to this money and he had to reply in self-defence. He points to the heading of the advertisement:

"Due to stories and accusations about my work in Parliament, I wish to (publish this) correction."

What stories and accusations was he talking about? He pointed to some contentious statements made by him and about him which had appeared in the press and television overseas, news of which had filtered back to Tonga. In particular he referred to a story that he said was being repeated in kava clubs and elsewhere for some weeks before election day - that Mr Pohiva had misled people about the money he had repaid, and that in fact he had drawn the money again later for himself.

560 No less than 20 witnesses spoke of this story. Tahilanu Fotu said he heard it as long ago as January 1988, but that cannot be right as the money had not been dealt with by then. There is a driver at the Treasury, Paula 'Aholelei, who was very ready to believe ill of Mr Pohiva. He got hold of half the story, to the effect that the money had been taken out or transferred, not knowing what had happened after that. He believed that Mr Pohiva had misled people by pretending that he had returned money which in fact he had drawn. He admitted that he spread that story from November 1989 onwards. It could well have been earlier. As such stories do, it spread wide and fast, and probably lost little in the telling. Most of the witnesses first heard it in early January 1990. Suliasi Kulikefu Kaitu'u first
370 heard it in late 1989. Sione Fuapau heard the story from a customer in his restaurant in Nuku'alofa rather earlier - he thought while Parliament was still sitting. The customer, Tevita Lealofi said he was misunderstood, but I don't believe him. Sione was quite clear in his recollection, and informed Mr Pohiva of the story very shortly afterwards.

I find that by the beginning of January 1990, at the latest, it was common gossip that Mr Pohiva had drawn for his own benefit the money he had earlier returned to the Treasury. I also find that although the advertisement in the Times
380 of Tonga publicised what he had done, his primary purpose in publishing this information was to counteract that gossip.

There was one more reference in print to the repayments, but not by Mr Pohiva. Siosua Kanongata'a and Siale 'Ataongo Puloka are much opposed to Mr Pohiva's policies. They used to run a radio programme expressing their views. Just before the election they produced a paper, *Mate Ma'a Tonga* (Ex 15). This refers to the advertisement in the Times and appears to be in reply to it. It argued that when Mr Pohiva gave money to the Ministry of Education he was giving his own money, and said "... you are buying the votes of the teachers ...". Siosua Kanongata'a said
390 in evidence that "the story (about the gift of scholarships) had been around for a long time."

Mr Pohiva said that those allegations made it even more important for him to explain publicly about the money he had returned.

(b) *The public meetings.*

In the course of his campaign Mr Pohiva visited many kava clubs to canvas support. He also organised public meetings at the Basilica and at Tatakamotonga. It was alleged that wherever he went he was keen to tell people about the money he had returned. I must consider each of those meetings.

400 (c) *The schoolteacher*

This allegation refers to a primary school teacher at Tatakamotonga, 'Ana Polama Fungalei. She admits that on the day before the election she told some children (she says only her class) to tell their parents to vote for Mr Pohiva and 2 others with similar aims. She said that she did not mention that Mr Pohiva had given money for scholarships.

I find that she spoke to more than her own class, and that she mentioned the scholarship money. Haloti Vatangi is not in her class, but he told his mother, Sela, that the teacher said they should vote for Mr Pohiva because he had given money for scholarships. It is unlikely that he would have said that if he had not heard it said by the teacher.

'Ana said that this was done of her own accord, without being requested by anyone to do it. I accept that. She has no particular link with Mr Pohiva. I find that she did this without being asked, and without the knowledge or approval of Mr Pohiva. It was not the act of an agent for which he could be held responsible.

3. *The alleged promise*

By section 21(3) of the Act a promise made within 3 months of the election is deemed to be a bribe "... unless the contrary be proved." Mr Edwards argues that Mr Pohiva made such a promise in his advertisement in the Times, namely

What Mr Pohiva said in that advertisement was this:

"...and in 1989 I returned \$6232.46, including 50% of the wage rise not yet received."

I read that as a statement of what he had already done, not as a promise for the future. He had already repaid the first 50% which had been paid; and he had made it clear to the Treasury that he would not accept the further 50% when it was paid out. So far as he was concerned the decision had been made. But even if it could be construed as a promise, I find that it was made not to induce people to vote for him, but in order to maintain consistency with his stated policies. "The contrary" has been proved.

Conclusions.

The only issue is what Mr Pohiva intended at the time when he repaid money to government, whether for use as scholarships or simply for payment into general revenue. Did he intend at the time to use those payments to influence votes at the next election?

There is very little evidence that he went out of his way to publicise what he had done. In the Kele'a for May-June 1989 (Ex 19) he published the fact that he had not drawn certain allowances; and he advertised details of his repayments in the Times of Tonga. But I have already found that his main purpose in these publications was not to publicise his payments. Any favourable publicity was incidental to his main aim. One one occasion - at Ha'ateiho - he made an unprompted reference to the fact that he had given money back to the government.

He mentioned the subject many times at other meetings, but only after he had been asked about it. Mr Edwards argued that even if he had been questioned about the money, he did not have to give details, and could have said merely that he was unable to discuss the matter. That is less than realistic. Mr Pohiva knew that people were saying that he had taken back the money he had refunded. If he refused

to answer questions about that, people would continue to believe that it was true, and that he had misled them. He could not afford to stay silent. I draw no adverse conclusions from the fact that he chose to answer questions when asked.

It seems to me that a person who really wanted to publicise the fact that he had returned money to government, would have done so more early in the election campaign, more frequently, and more effectively.

The most telling consideration is the general background. Mr Pohiva had frequently and publicly criticised the amount of parliamentary allowances, which he says are too high. When he was elected an M.P. he became entitled to those same benefits. In this situation whatever he did would have laid him open to criticism. If (as occurred) he returned the money, he could be accused of bribery. If he kept the money he could be accused of inconsistency or even dishonesty, by keeping the benefit of the payments about which he had previously complained. What he did was consistent with his previous public stance and it is difficult to see what else he could have done if he were to retain his credibility.

The evidence falls far short of what is required to establish that he was guilty of bribery. I find that his primary intention in refunding money to government, whether for scholarships or simply into general revenue, was to act and to be seen to act consistently with his public statements about parliamentary allowances.

The allegation of bribery fails.

B. CORRUPT OR ILLEGAL PRACTICES

The Law

Section 33(1) of the Act states:

"(1) Where... corrupt or illegal practices committed in relation to the election for the purpose of promoting or procuring the election of any candidate... have so extensively prevailed that they may be reasonably supposed to have affected the result, his election, if he has been elected, shall be void..."

In my judgement this section does not apply at all in the circumstances of this case. It deals with widespread and general malpractice, as is made clear by subsection (2):

"(2) Except under this section, an election shall not be liable to be avoided by reason of the general prevalence of corrupt or illegal practices"

All that is alleged is a few specific instances of corrupt or illegal practices; nothing approaching general corruption. But in case my view of the law should be wrong, I will consider the allegations made.

The section refers to "... corrupt or illegal practices..." but the Act does not tell us what they are. They are not defined. There is a gap in the law. In accordance with Civil Law Act (Cap 14) the court must therefore apply English law, so far as circumstances permit.

The English statute is the Representation of the People Act 1983. This defines the terms clearly. Corrupt practices include bribery (s. 113) and undue influence (s. 115) - which includes threatening voters, for which s. 22 of the Tongan Act makes provision. There are other corrupt practices which are not relevant to this case. I shall adopt the English classification of bribery and threatening voters as corrupt practices.

Illegal practices are multifarious. The only one which could apply is that of making a false statement about a candidate unless the person making it "... can show that he had reasonable grounds for believing, and did believe, the statement to be true." (section 106 (1)). It is alleged that Mr Pohiva made false statements; but all these statements were about himself. This section refers to statements about other candidates, and not to what a candidate says about himself. Therefore, even if the statements which Mr Pohiva is alleged to have made were false this would not amount to an illegal practice under s. 106(1) of the English Act.

510 It follows that in Tonga it is not an illegal practice to make a false statement with the intention of influencing voters, unless that statement is about another candidate.

But in case I should be wrong about that, I will consider whether Mr Pohiva did make any false statements as alleged.

The Facts.

1. The alleged false statements.

(a) he stated that he had repaid money to the Treasury, when in fact it remained his money.

520 On the evidence of the Accountant General, Siaosi Nakao, I find that the money repaid did *not* remain available to him. Once repaid, he had lost any right to it.

(b) he exaggerated the sums repaid.

The figures given in the advertisement were incorrect. So were the figures originally given in evidence by the officer from Treasury. To compare the statements with the sums actually repaid:

	As Stated	Correct amount
1987	\$8,637.33	\$8,637.33
1988	\$6,875.06	\$7,218.16
530 1989	\$6,222.46	\$4,095.30

The difference of \$1,794.06 is more than accounted for by the second half of the salary increase which has not yet been paid, but Mr Pohiva has said that he will refuse.

I find that the figures advertised were inaccurate, but they were not grossly inaccurate and represented what Mr Pohiva believed to be the truth. I do not regard this as a deliberate attempt to mislead the public.

(c) the reference to being chosen by God is not pursued.

(b) he stated in the Kele'a for January 1990 that the Minister of Finance had failed in his attempt to have the action against him struck out.

540 It is difficult to know exactly what the Kele'a is trying to say in the piece complained of on page 3. But if there was any doubt it is resolved on page 2 in the article "Hopo Paasipooti Liliu Kakai Tonga" which refers to the decision "... to dismiss the Minister of Finance" and said that Mr Pohiva had appealed against that decision. I do not regard this as a deliberate attempt to mislead the public.

(e) he said that the decision of the court was wrong (which is said to be a false statement) and biased (which is said to be contempt of court).

Even if this was said, it was not a misrepresentation of fact. Whether the decision was wrong is a matter of opinion. As to contempt of court, the court is

not and should not be immune from criticism. Any person is entitled to express his disagreement with a court decision, provided it is not done in such a way as not to affect the ability of the court to function properly, or to create the risk of an unfair trial. In any case contempt of court is an offence which concerns only the court and could never constitute an electoral offence. There is no merit whatsoever in this allegation.

On the evidence, and in law, the allegations relating to misrepresentation of facts fail.

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C. THREATENING VOTERS

The Law

Section 22 of the Act states:

"22. (1) It is an offence to threaten in any way the person, family or property of an elector in an attempt to influence the elector's vote at an election."

And section 32 provides that if a person is proved guilty of this at the trial of an election petition his election must be declared void.

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Two instances of threats were alleged in the petition. One was abandoned. The other relates to Sione Palesi. He is a senior officer in the Ministry of Lands. A dispute arose over the allocation of loads of sand to lorry owners. Mr Pohiva took up the case of some who felt aggrieved. He had previously lodged a complaint about it with Minister of Lands. Not long before the election Mr Pohiva telephoned and asked to see him again about the loads of sand. He made an appointment in Sione Palesi's office which he did not keep. Sione rang him and was told that he had no transport, so he went to see Mr Pohiva at his home.

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It is alleged that Mr Pohiva threatened to expose corrupt dealings by Sione Palesi, unless he gave an interview favourable to him; and that with this threat hanging over him, Sione gave an interview which was later published in the *Kele'a* for February 1990 (Ex 3). It was supposed to be helpful to Mr Pohiva's campaign. It revealed that certain high ranking persons were working together to try to secure his defeat.

First of all, I cannot see why an interview of that nature should help him. It was quite obvious that certain persons were likely to oppose him; and it is a perfectly normal occurrence in a democratic election for persons sharing the same aims to work together. There is nothing improper in that.

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Sione Palesi said that he did not expect the interview to be published. If that were so, it did not matter to him what he said. More importantly, he agreed that he was not actually threatened. He said that he "felt threatened" because he knew that Mr Pohiva could make trouble for him, but no threat was made. That is not enough. There must be some evidence of an actual threat before this offence can be established.

Further, there is no evidence that such a threat, even if it existed, was made "... in an attempt to influence the elector's vote." If anything, it was an attempt to obtain an interview which it was thought would be helpful to Mr Pohiva; or maybe to obtain information about his opponents' tactics.

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Mr Edwards argued that the threat was intended to influence his vote, as shown by the fact that he switched side immediately after the interview. That was not how his case was pleaded; and if he did switch sides, he very repaidly switched

back. He said in evidence that he does not support Mr Pohiva's views.

On the evidence, the allegation of threatening Sione Palesi fails.

The petitioner has established no ground on which the election of Mr Pohiva should be declared null and void and the petition is dismissed. I shall certify to the Speaker that at the election on 15 February 1990 Mr Pohiva was not guilty of any of the alleged offences of bribery, corrupt or illegal practice or threatening voters, and that he was therefore duly elected. I will hear argument as to costs.