

ELECTION PETITION RE GAGAIFOMAUGA NO. 1
Territorial Constituency No. 30

TIMO KOLIO v TIAPILI FILISI ET AL

Supreme Court Apia
29 March; 5 September 1973
Donne CJ

ELECTIONS (Qualification of candidates) - Every citizen of Western Samoa "registered as an elector" or "registered as a voter on the individual voters' roll" who "is not disqualified under the provisions of the Constitution or of any Act": Electoral Act 1963 s 5 - Petition alleging election of Member of Legislative Assembly void by reason of his having been wrongly registered in the Register of Matais and therefore not qualified as an elector pursuant to s 16 of the Act or as a candidate for election pursuant to s 5 - Matai title conferred on respondent in 1960 and duly bestowed in accordance with Samoan customs and usages but not entered in Register in normal course as saofa'i certificate sent to Registrar never received - Title eventually registered December 1, 1972 by official of Land and Titles Court in charge of Register after he had visited respondent's village and satisfied himself respondent was the "rightful holder" of the title and obtained a new saofa'i certificate - Petitioner and respondent polling equal number of votes in General Election and recount confirming tie respondent chosen as successful candidate by lot - Registrar notifying respondent on same date that his title had been deleted from the Register of Matais because there had been no publication of the particulars of his appointment in the Savali as required by s 31(4) of the Samoan Land and Titles Protection Amendment Act 1969, which substituted a new procedural section for registration of titles in the Samoan Land and Titles Protection Ordinance 1934 (the principal Ordinance) as amended - Petition questioning respondent's election alleging both failure to publish particulars of his appointment to his title and that the saofa'i certificate obtained by the Registrar in 1972 was deficient -

Held, that the respondent's right to register his title was acquired in 1960 and was not affected by the substitution of the new procedural section in 1969: vide Acts Interpretation Act 1924 (NZ) s 20(e)(iii); Chaplin v Holden and NIMU Insurance Association [1971] NZLR 374; and the clear indication in s 31 of the Amendment Act 1969 that it was not to be retroactive, viz., that it was to apply to appointees "after the coming into force of the section";

that ss 27 and 30(1) of the principal Ordinance as amended in 1957 fixed the only requirements for registration of respondent's title as being to satisfy the Registrar that his appointment was "in accordance with the customs and usages of the Samoan people" and that he was therefore the "rightful holder" of the title; and to supply such other particulars "as may from time to time be prescribed"; that those requirements had been met prior to registration of his title December 1, 1972; that there being no provision as to the method of prescribing the other particulars to be supplied and none having been prescribed, registration prior to 1969 did not necessarily depend on receipt by the Registrar of a saofa'i certificate: conflicting statement in Leota Pita v Mapuilesua Malo et al, July 17, 1973, that receipt of saofa'i certificate a prerequisite to registration explained;

that the amendments to the principal Ordinance in 1957 must be given a fair, large, and liberal interpretation to carry out the intention of the Legislative Assembly, which was to ensure that all

appointments to titles were properly made in accordance with Samoan customs and usages and registered, and did not impose any restriction or disadvantage on a matai properly appointed;

and finally, that pursuant to the provisions of s 115 of the Electoral Act 1963 the respondent was entitled to succeed "on the substantial merits and justice" of his defence.

SAMOAN LAND AND TITLES PROTECTION - Procedural requirements for registration of titles - Legislation - Whether amending enactments to be construed as retroactive - Samoan Land and Titles Protection Ordinance 1934 as amended - Observations regarding the necessity for legislative reform.

STATUTES (Repeal) - Effect of repeal by substitution of new provision - Acts Interpretation Act 1924 (NZ) s 20(e)(iii) - Substantive rights acquired under previous legislation unaffected by repeal: vide Chaplin v Holden and NIMU Insurance Association [1971] NZLR 374 - Procedural provisions to be construed as retroactive unless otherwise indicated.

PETITION for a declaration that the election of the first respondent as a Member of the Legislative Assembly in the General Election of February 24, 1973 was void.

Registrar of Electors and Voters joined as second respondent.
Petition dismissed with costs.

Clarke for petitioner.

Powles for the first respondent.

Slade for the second respondent.

Cur adv vult

DONNE CJ. This is a petition filed under the Electoral Act 1963 seeking a declaration from this Court that the election for a Member of Parliament for the Gagaifomauga No. 1 Territorial Constituency held on the 24th February, 1973 is void.

I have now considered the submissions in writing of counsel, the last of which were received by me on the 9th July, 1973.

The petitioner, one of the unsuccessful candidates, claims that the first respondent was not duly qualified as either a candidate or an elector in accordance with the provisions of the Electoral Act 1963. He bases his claim on the grounds that the first respondent was wrongly entered in the Register of Matais and thus did not possess that essential qualification for an elector required by Section 16 of the Act, which is necessary to qualify him as a candidate for election by virtue of Section 5.

It has been established to my satisfaction that some time in 1960 the Title Tiapili was conferred on the first respondent. The Pulenu'u of the village at the time, Taito Tanu, and the present Pulenu'u, Lemana Moli, were both present at the saofa'i ceremony at which approximately sixty of the matais of the village, including the petitioner were present, and at which the title was bestowed in accordance with Samoan custom. Taito Tanu duly prepared a saofa'i certificate and forwarded it by Police messenger to the Office of the Land and Titles Court at Tuasivi, and at the same time handed a copy of the certificate to the first respondent. The certificate never reached the Land and Titles Court and the first respondent has mislaid his copy. The copy which should have been retained in the book of

certificates required to be kept by the Pulenu'u has not been produced and is presumed lost. No elections were held in the said constituency in the years 1964 and 1967, but in 1970 there was a contest in which the first respondent was interested as a potential candidate. He came to Apia to file his nomination as a candidate, but was informed that he was not eligible as he had not taken his Oath of Allegiance. He subsequently took the Oath, but was too late to qualify either as an elector or a candidate. He took no further steps to inquire as to his registration as a matai until November, 1972 when again he was interested in becoming a candidate in the Parliamentary Election in question, having been unanimously nominated by his sub-village of Manase as a candidate. However, early in November, Malaeulu, an officer of the Land and Titles Court, visited Savai'i for the purpose of checking the names of matais, and in the course of checking he ascertained that while the title had been conferred on the first respondent many years earlier his name had not been registered in the Register of Matais. He advised the Pulenu'u, Lemana Moli, who in turn informed the first respondent of this fact. The latter obtained from the Pulenu'u a new saofa'i certificate and proceeded forthwith to Mulinu'u presenting to the Court Office on the 30th November, 1972 the certificate, which was in the following form:-

NOTICE

NOTICE OF BESTOWING OF A SAMOAN MATAI TITLE

MATAI TITLE	Tiapili	VILLAGE	Manase
CHIEF OR ORATOR	Chief		
IS IT A TITLE WHICH HAS BEEN LONG FOUNDED OR HAS RECENTLY BEEN FOUNDED		Long founded	
TAULE'ALE'A NAME OF THE PERSON BESTOWED WITH THE TITLE AS REPORTED		Filisi A.	
DATE, MONTH, YEAR AND THE VILLAGE WHERE THE PERSON BESTOWED WITH THE TITLE WAS BORN		19.9.1972	Safotu
WHETHER A CITIZEN OF WESTERN SAMOA			
SEX	Male		
WHETHER THE PERSON CONFERRED WITH THE TITLE HAS OTHER TITLES		-	VILLAGE -
DATE, MONTH, YEAR AND THE VILLAGE WHERE THE CONFERRING OF THE TITLE TOOK PLACE			-
PERSON OR PERSONS WHO SPONSORED THE CONFERRING OF THIS TITLE		Taito T. & Aiga Potopoto	
WHETHER THERE WERE ANY OBJECTIONS WHETHER HAD BEEN SETTLE OR NOT: HOW WERE THEY SETTLED			
SIGNATURE OF NEW TITLE HOLDER IN HIS OWN HANDWRITING & HIS TAULE'ALE'A NAME		Tiapili Filisi	
SIGNATURE OF PULENUU		Lemana Moli	
VILLAGE		Manase	
DISTRICT		Gagaifomauga	
DATE, MONTH, YEAR		22.11.1972	

(This is the Registrar's copy)

At the Office, Malaeulu, who had been designated by the Registrar of the Land and Titles Court the duty of keeping the Register of Matais and of making entries therein, saw the first respondent and received the certificate, but after making enquiries added in his own handwriting the following particulars:-

DATE, MONTH, YEAR AND THE VILLAGE WHERE THE PERSON BESTOWED WITH THE TITLE WAS BORN	19.9.1923
WHETHER A CITIZEN OF WESTERN SAMOA	Ioe (Yes)

DATE, MONTH, YEAR AND THE VILLAGE
WHERE THE CONFERRING OF THE TITLE
TOOK PLACE

Ua leva - Safotu (Long
ago, Safotu)

HOW WERE THEY SETTLED

Leai (No)

In the result the certificate as received by the officer finally read:-

NOTICE

NOTICE OF BESTOWING OF A SAMOAN MATAI TITLE

MATAI TITLE	Tiapili	VILLAGE	Manase
CHIEF OR ORATOR	Chief		
IS IT A TITLE WHICH HAS BEEN LONG FOUNDED OR HAS RECENTLY BEEN FOUNDED		Long founded	
TAULE'ALE'A NAME OF THE PERSON BESTOWED WITH THE TITLE AS REPORTED		Filisi A.	
DATE, MONTH, YEAR AND THE VILLAGE WHERE THE PERSON BESTOWED WITH THE TITLE WAS BORN	19.9.1972 - Safotu	19.9.1923 - Safotu	
WHETHER A CITIZEN OF WESTERN SAMOA		Yes	
SEX		Male	
WHETHER THE PERSON CONFERRED WITH THE TITLE HAS OTHER TITLES	-	VILLAGE	-
DATE, MONTH, YEAR AND THE VILLAGE WHERE THE CONFERRING OF THE TITLE TOOK PLACE		Long ago, Safotu	
PERSON OR PERSONS WHO SPONSORED THE CONFERRING OF THIS TITLE		Taito T. & Aiga Potopoto	
WHETHER THERE WERE ANY OBJECTIONS: WHETHER HAD BEEN SETTLED OR NOT: HOW WERE THEY SETTLED:		No	
SIGNATURE OF NEW TITLE HOLDER IN HIS OWN HANDWRITING & HIS TAULE'ALE'A NAME		Tiapili Filisi	
	SIGNATURE OF PULENU'U	Lemana Moli	
	VILLAGE	Manase	
	DISTRICT	Gagaifomauga	
	DATE, MONTH, YEAR	22.11.1972	

(This is the Registrar's Copy)

It should be noted that while the typed notes of Malaeulu's evidence do not record that Malaeulu wrote the above-mentioned information on the certificate my handwritten notes record the following: "Writing on Cert. mine written at the time of interview with applicant". Malaeulu forthwith took steps to enter the first respondent's name in the Register of Matais at Savai'i, and registration was effected by him on the 1st December, 1972. It should also be noted that there were never any objections to the conferring of the title on the first respondent. The first respondent's name was duly entered on the Electoral Roll since on the face of it he possessed the qualifications. He became a candidate for election and on the official count there was an equality of votes between him and the petitioner.

The Chief Returning Officer pursuant to Section 80(2) of the Electoral Act 1963 then applied to the Court for a recount of votes. On the recount the equality of votes was confirmed and as required by Section 81(5) of the Act the Chief Returning Officer determined by lot which candidate was to be elected and the first respondent was successful. The recount occurred on the 9th March, 1973 and on that day the Registrar of the Land and Titles Court advised the first respondent by letter that his name was deleted from the Register of Matais pursuant to Section 30(3) of the Samoan Land and Titles Protection Ordinance 1934 as amended by the Samoan Land and Titles Protection Amendment Act 1969 on the ground that it had been proved to the Registrar's satisfaction that the entry had been made in error.

The error was acknowledged in the letter to have been that as there had been no publication by the Registrar in the Savali fixing the time within which objections to the appointment might be lodged, the entry was prematurely made. The first respondent on the 14th March, 1973 filed an objection to the said deletion.

Now, the issue between the petitioner and the first respondent here centres around the question of registration of the title in the Register of Matais. The petitioner claims that there should have been publication of the particulars of the appointment in the Savali and further, that the saofa'i certificate presented to the Registrar for registration was defective.

In 1969, the law dealing with the registration of matais was amended substantially.

Prior to 1969, the relevant portions of Sections 30 and 31 of the Samoan Land and Titles Protection Ordinance 1934 read as follows:-

30. (1) There shall be kept in the Court by the Registrar a Register of Matais and title holders to be called the "Register of Matais" in which shall be entered the names of such persons as are from time to time appointed the rightful holders of Samoan names or titles in accordance with the provisions of this Part of this Ordinance together with such other particulars as may from time to time be prescribed.

(2) No entry of the name of any person shall be made in the Register of Matais except pursuant to the directions of the Registrar.

(3) The Registrar may cause the name of any person to be removed from the Register of Matais if -

- (a) it is proved to the satisfaction of the Registrar that he has died or has been registered in error; or
- (b) the removal of this name from the register is directed by an order of the Court; or
- (c) he satisfies the Registrar that he has vacated the title.

31. (1) Every Samoan who shall after the coming into force of this section be appointed the holder of a Samoan name or title shall within seven days of the holding of the ceremony of appointment (saofa'i) give notice thereof to the Pulenu'u of the village in which such ceremony was held.

(2) It shall be the duty of the Pulenu'u of every village whenever he has knowledge that a ceremony of appointment to a Samoan name or title has been held in his village (whether by receipt of a notice as prescribed by the preceding subsection (1) of this section or otherwise) to take the following action:-

- (a) Enter the particulars thereof in a book to be kept by him for the purpose in triplicate in such form as the Registrar shall prescribe;
- (b) Forward to the Registrar from the book the original folio containing the said particulars signed by the Pulenu'u;
- (c) Hand the duplicate folio from the book containing the said particulars to the person appointed to the Samoan name or title;
- (d) Retain as a permanent record in the book the triplicate folio containing the said particulars of the appointment of the person to that Samoan name or title.

(3) The Registrar on receipt by him of the particulars referred to in subsection (2) of this section from a Pulenu'u shall enter the name of that person in the Register of Matais as the rightful holder of the name or title to which he has been appointed.

Section 3 of the Samoan Land and Titles Protection Amendment Act 1969 repealed the above Section 30 and substituted therefor a new Section

30, which is substantially the same as the repealed Section, but adding an additional duty on the Registrar to delete the names from the Register if he is of the opinion the appointment has not been made in accordance with Samoan customs and usages (subsection (4)), and giving the right to persons whose names have been deleted by the Registrar for reasons similar to those in the former subsection (3) to petition to the Court against the deletion (subsection (7)).

Section 4 of the Amendment Act 1969 repealed the above provisions of Section 31 and substituted the following therefor:-

31. (1) Every Samoan who shall, after the coming into force of this section, be appointed to be the holder of a matai name or title (hereinafter in this section called "the new appointee") shall, within seven days of the holding of the traditional ceremony of appointment, give notice in writing thereof to the Pulenu'u of the village in which that ceremony was held, and to the Registrar.

(2) Within fourteen days after the Pulenu'u of any village learns that a traditional ceremony of appointment to a Samoan name or title has been held in his village (whether by receipt of a notice in writing pursuant to subsection (1) of this section or otherwise), he shall take the following action, -

- (a) Ascertain whether or not that village is the village to which that name or title belongs;
- (b) Enter and sign in triplicate in a book to be kept by him for the purpose in such form as the Registrar shall prescribe the particulars of that traditional ceremony of appointment to that name or title including whether or not the village in which it has been held is the village to which that name or title belongs;
- (c) Forward to the Registrar from the book the original folio containing those particulars;
- (d) Hand or forward to the new appointee from the book the duplicate folio containing those particulars; and
- (e) Retain in the book the triplicate folio containing those particulars for at least ten years from the date of the entry.

(3) The Registrar may, at any time or times, by notice in writing to the new appointee, requisition for any further information he may deem necessary.

(4) The Registrar, on receiving a notice in writing pursuant to subsection (1) of this section, or on receiving an original folio containing particulars pursuant to subsection (2) of this section, and on being satisfied that the notice or folio is bona fide, shall publish such of the particulars thereof as are sufficient to identify the matai name or title and the new appointee in the Savali in two consecutive issues thereof, as if the notice or folio were notice of a claim to a pulefa'amau and as if section 23 of this Ordinance were applicable.

There is no saving clause in the Amendment Act 1969 apart from a provision in Section 30 making applicable to entries in the Register, both before and after the coming into force of the section, certain powers and duties of the Registrar as to deletion of names (subsection (5)). The position, therefore, is that former Sections 30 and 31 are repealed and the new Section 31 cannot apply to appointments of matais made before it came into force.

The first question to be considered is what is the law as to registration of the matais appointed before the coming into force of the Amendment Act 1969, but requiring registration after it became law. Regard must be had to Section 20(e) of the Acts Interpretation Act 1924 (NZ), which is in force in Western Samoa. This reads:-

20. The provisions following shall have general application in respect to the repeals of Acts, except where the context

manifests that a different construction is intended, that is to say:

- (e) The repeal of an Act or the revocation of a bylaw, rule, or regulation at any time shall not affect -
 - (i) The validity, invalidity, effect, or consequences of anything already done or suffered; or
 - (ii) Any existing status or capacity; or
 - (iii) Any right, interest, or title already acquired, accrued, or established, or any remedy or proceeding in respect thereof.

Now, as from the time of conferment of his title in 1960, the first respondent had acquired the right to registration of his appointment in the Register of Matais. Section 20(e)(iii), in my opinion, preserves that right notwithstanding the repeal of the former Sections 30 and 31 by the Amendment Act 1969. The effect of this Section was explained by the Court of Appeal in New Zealand in Chaplin v Holden and NIMU Insurance Association [1971] NZLR 374, in which the Court was asked whether an insurer's indemnity in respect of injuries arising out of a motor accident was limited to \$10,000, which was the maximum fixed by the relevant section of the Transport Act 1962 in force at the time of the accident, or \$15,000, which at the time Judgment was obtained was the limit fixed by an amending section of the Act, which also repealed the previous section. Turner J., delivering the Judgment of the Court, said at page 379 (line 13) to page 380 (line 28):-

It is remarkable, to use a mild expression, that those responsible for drafting this piece of legislation failed to perceive - as they obviously did fail to perceive - that such a case as this was bound to arise, and that it was desirable to provide, one way or the other, for it. It was well observed by Mr Ongley in argument that those responsible for the legislation by which s 82 was successively amended in 1950, 1959, and 1963, prescribed on each occasion a touchstone by which it should be decided which claims were affected by the amendment. In each of the amendments which we have mentioned the matter is adverted to in the amending statute, and the test is clearly set out. When the 1968 amendment was passed those responsible for it failed to provide such a test; and the result has been this litigation. The Court must interpret the statute as best it can. The considerations which we have mentioned have led us to the conclusion that the rights of all parties, as regards the indemnity, had accrued immediately upon the occurrence of the accident, and that the effect of the Acts Interpretation Act is that these accrued rights were not affected by the amending statute. Claims arising out of accidents happening before 1 January 1969 continue to attract the old indemnity; claims arising from accidents occurring on or after that date attract the increased indemnity.

We were referred in argument to several authorities on the retrospective operation of statutory provisions, such as, for instance, Re Athlumney, Ex parte Wilson [1898] 2 QB 547 and Ward v British Oak Insurance Co Ltd [1932] 1 KB 392. It seems to us that these have little relevance to the case before us. This is not a case in which, as in Ward v British Oak Insurance Co Ltd, a new statutory provision was enacted where there had been none before, and the question was, which claims were affected by the new provision and which were governed by the law previously obtaining. In such a case, if claims which have already accrued when the statute was enacted are to be regarded as affected, it must be because the statute is held to act retrospectively. In the case before us, however there was already a statute applicable to the case before the amendment of 1968 was enacted. The amend-

ment did two things simultaneously: (1) it repealed the old statutory provision which already applied to the claim (2) it substituted a new provision in its place. The question before us, therefore, is not whether the statute having been repealed the new provision now retrospectively governs the claim; it is rather whether the old statute continues to govern the claim, notwithstanding its repeal as regards claims arising after the date of the amendment. The cases dealing with this topic are to be found collected in Maxwell on the Interpretation of Statutes, 12th ed 16-19, and Odgers' Construction of Deeds and Statutes, 5th ed. 357 *et seq*, passages not cited to us in argument. It was while considering these texts that one of the members of the Court came across Free Lanka Insurance Co Ltd v Ranasinghe [1964] AC 541; [1964] 1 All ER 457, a recent decision of the Privy Council to which neither party referred before us. In this case the Judicial Committee had before it a set of facts in which the liability of an indemnifier under a statutory third party policy fell to be determined, after the enactment of a statute repealing the provision imposing that liability, in respect of an accident which had occurred before the date of the repeal. The relevant Ceylon statute corresponding to our own Acts Interpretation Act was as follows:

"Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected . . .

"(b) any offence committed, any right, liberty, or penalty acquired or incurred under the repealed written law."

Applying these provisions to the circumstances of that case the Judicial Committee held that the respondent had as on the date of the original accident "acquired a right" against the indemnifiers and that that right was preserved notwithstanding the subsequent repeal of the legislation imposing the statutory liability. The right to damages, which the plaintiff had against the defendant, as at the date of the repeal, said Lord Evershed at p. 552; 462, was more than a mere hope or expectation, he had in truth a right within the contemplation of the Interpretation Ordinance although that right might fairly be called inchoate or contingent. Adopting the language used by Lord Morris in Director of Public Works v Ho Po Sang [1961] AC 901; [1961] 2 All ER 721, Lord Evershed added that such a right would accrue even if a process of quantification still remains. This decision, and the reasons by which their Lordships justified it, seems to support the conclusion to which we have independently come on principle.

So in this case, I consider that the right to register the first respondent's title in the Register of Matais having arisen from the time of its conferment in 1960, the provisions of the law prior to the coming into force of the Amendment Act 1969 must apply in respect of such registration. It is true, Section 31 in both enactments is a section dealing with procedure and provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament. Craies on Statute Law, 7th Ed. at page 401 sets out the position thus:-

But there is no vested right in procedure or costs. Enactments dealing with these subjects apply to pending actions, unless a contrary intention is expressed or clearly implied. "It is a general rule that when the legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them. But there is an exception to this rule, namely, where enactments merely affect procedure and do

not extend to rights of action." For "it is perfectly settled that if the legislature forms a new procedure, that, instead of proceeding in this form or that, you should proceed in another and a different way, clearly there bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be."

However, in the case of the new Section 31 as enacted in 1969, there is a provision that it applies only to "every Samoan who shall, after the coming into force of this section, be appointed to be the holder of a matai name or title." Clearly therefore, the new Section was not intended to have a retrospective effect.

Since, therefore, the law existing prior to 1969 must apply in the case of the registration of the first respondent's title, it was not necessary for the publication of the particulars of the appointment to be made in the Savali, and I so hold.

Counsel for the petitioner submits, however, that the saofa'i certificate presented to the Registrar in this case was invalid, and that consequently there could be no valid registration. In support of this submission, he contends firstly, that the only certificate that could properly be received by the Registrar was the original one certified by the Pulenu'u who held office at the material time and who was either present at the ceremony of appointment or was notified thereof, and secondly, that the saofa'i certificate presented for registration did not contain sufficient particulars to enable the Registrar lawfully to register the appointment.

In my view, the wording of Section 31(2) of the Ordinance does not support the petitioner's first submission. The relevant part of the Section reads:-

31.(2) It shall be the duty of the Pulenu'u of every village whenever he has knowledge that a ceremony of appointment . . . has been held in his village (whether by receipt of a notice . . . or otherwise) to take the following action:-
(The underlining is mine).

If the Legislature had intended only the Pulenu'u of the village at the time of the appointment to be the one authorised to give the notice it would have said so. The Section does not limit either the source of his knowledge or the time within which he must acquire it or transmit it to the Registrar.

But it is, I think, obvious from an examination of Sections 30 and 31 of the Ordinance as applying prior to 1969 that the authority for the entry of appointments in the Register of Matais is contained in Section 30(1) which reads:-

30.(1) There shall be kept in the Court by the Registrar a Register of Matais and title holders to be called the "Register of Matais" in which shall be entered the names of such persons as are from time to time appointed the rightful holders of Samoan names or titles in accordance with the provisions of this Part of this Ordinance together with such other particulars as may from time to time be prescribed.

This Section fixes the only qualification for entry in the Register as being an appointment as a "rightful holder" of a Samoan name or title and it makes it mandatory that all "rightful holders" be registered "together with such other particulars as may from time to time be prescribed". "Rightful holder" prior to 1969 is defined in Section 27 as:-

27. In this part of this Ordinance where not inconsistent with the context, "Rightful Holder" means a person appointed the holder of a Samoan name or title by and in accordance with the customs and usages of the Samoan people and includes a person

who has been appointed thereto in pursuance of a judgement of the Land and Titles Court or of an interim order made under the provisions of this Ordinance.

Consequently, a Samoan who can satisfy the Registrar that he is a "rightful holder" has a right to registration, on supplying the "prescribed particulars". The Section is silent upon the manner of prescription of the particulars, unlike in Section 31 where the form in the book to be kept by the Pulenu'u is prescribed by the Registrar; but a proper interpretation must be that they be prescribed by law, i.e., by Act or regulation. No such particulars have been prescribed.

Section 31, on the other hand, is, as stated above, a procedural section only which sets out the duties of a Samoan on appointment to notify the pulenu'u, who, in turn, has a duty to forward a certificate to the Registrar, who, on the receipt of particulars from a pulenu'u, is required to register the appointment. As I see it, the Section defines a procedure to be followed in certain circumstances, but, it is not stated to be an exclusive procedure, and I have come to the firm conclusion that the right to registration prior to 1969 did not necessarily depend upon the receipt by the Registrar of a saofa'i certificate. In fact, of course, Section 31(3) does not require the Registrar to register on receipt of the certificate but on receipt "of particulars referred to in subsection (2) of this section". Those are the particulars the Pulenu'u obtains from his knowledge of the appointment; and if they are sufficient to show that the appointee is a "rightful holder" he must be appointed. The certificate may correlate these particulars, but in the absence of any particulars prescribed in pursuance of Section 30, I consider the Registrar must register an appointee if he is satisfied he is a "rightful holder" and that he is not restricted to the saofa'i certificate as a means by which he obtains his knowledge of the appointment. I think it is indisputable that the Legislature in enacting Sections 30 and 31 of the Ordinance in 1957 intended to ensure that all appointments to titles were registered and were properly made in accordance with Samoan customs and usages. The Legislature did not thereby impose any restriction or disadvantage upon a matai who was properly appointed. Section 5(j) of the Acts Interpretation Act 1924 provides:-

Every Act . . . shall be deemed remedial . . . and shall accordingly receive such fair, large, and liberal construction and interpretation as will best ensure the attainment of the object of the Act . . . according to its true intent, meaning, and spirit.

In my Judgment in the case of Leota Pita v Mapuilesua Malo et al delivered on the 17th day of July, 1973 I said:-

Now, a prerequisite to registration in the Matai Register, and the authority therefor, is the receipt by the Registrar of this saofa'i certificate which must contain particulars prescribed by him in order that he may be satisfied, inter alia, that the appointment to a title has been properly made and that there have been no objections to its conferment.

Out of its context, this could appear to be a general statement of law in conflict with my finding above. However, in Leota Pita's case the Court was not called upon to decide, as in this case, the requirements of and the right to registration, since registration there had been obtained by a fraud, which happened to be a misrepresentation in the saofa'i certificate upon which the Registrar relied, and in consequence was void. The above quotation is thus obiter dictum, but it would, I now feel, have been preferable had it been expressed in the past tense. In this case, I have considered fully the requirements of registration, and in the result I have reached the conclusion here which I have expressed above.

Now, there is no doubt on the evidence the first respondent was appointed to his title by and in accordance with the customs and usages

of the Samoan people. This is not challenged by the petitioner, who was deputed by the matais of the first respondent's village to make the speech of blessing at the saofa'i ceremony. Taito Tanu, the matai of the village at the time and who was also present, confirms that everything was done at the saofa'i which ought to have been done to comply with custom. Malaeulu, the officer authorised by the Registrar of the Court to enter the names in the Register of Matais, a short time prior to registration of the first respondent's title had been to the latter's village and ascertained that the title had been properly conferred. Indeed, the Registrar has said that the only ground for the removal of first respondent's name from the Register on the 9th March, 1973 was that the particulars of appointment had not been published in the Savali. There were and never have been any objections to his appointment, and therefore, as he was the "rightful holder" of the Title Tiapili, he was entitled to be registered in the Register of Matais on satisfying the Registrar of that qualification. That he did this is evidenced by the fact that he was so registered.

Since, therefore, I have held that there was no legal obligation to advertise the appointment, and that the evidence establishes he had satisfied the Registrar on the 30th November, 1972 that he was the "rightful holder" of his title, I find the first respondent was properly registered in the Register of Matais on the 1st December, 1972. That being so he was entitled at all material times to be an elector and a candidate for election as a Member of Parliament within the meaning of Section 5 of the Electoral Act 1963, and consequently to be elected as such. In the circumstances, the petition must fail.

In any case, I feel the Court would be justified in dismissing the petition, accepting the guidance of Section 115(a) of the Electoral Act 1963 which states:-

115. On the trial of any election petition -

- (a) The Court shall be guided by the substantial merits and justice of the case without regard to legal forms or technicalities:

As has been established, the first respondent was appointed in 1960 in accordance with the customs and usages of the Samoan people and he is the "rightful holder" of his title. His right to vote is impeached because of alleged procedural defects, partly attributable to circumstances beyond his control and to the conflicting interpretation of the legislation by administrative officers. On the score of "substantial merits and justice" the first respondent would be entitled to succeed in his defence.

I think it is proper for me to make some observations on the legislation governing registration of titles and indeed the practice and procedure of the Land and Titles Court generally. The Native Land and Titles Protection Ordinance was enacted in 1934. In 1937, following the lead in New Zealand with the Maori Land Act, the word "Native" was dropped and "Samoan" substituted therefor. There have been fourteen Amendments of the Ordinance since its enactment. In the result, the original Ordinance is "but a shadow of its former self". It is, in some respects uncertain, e.g., Section 4(7) of the Amendment Act 1969 requires objectors to file an objection "as soon as conveniently may be", an expression which almost defies interpretation. Section 30 as amended in 1957 refers to prescribed particulars but the Ordinance makes no provision for the promulgation of any regulations, or for any machinery for prescribing particulars. I am satisfied that much of the confusion that has resulted in the election petitions with which this Court has been concerned recently, is due to the state of this legislation. The Ordinance at present appears in the Statute Books as a patchwork effort, long overdue for revision, modernization, and replacement, and the Legislators in their wisdom may well consider it inadvisable to condone any further repair work on it.

The petition is dismissed with costs of \$40 to the first respondent. Witnesses' expenses for certain witnesses will be allowed according to scale, to be fixed by the Registrar.

Solicitors for Timu Kolio: Messrs Jackson & Clarke.
Solicitors for Tiapili Filisi: Messrs Phillips & Loe.
Solicitor for Registrar of Electors and Voters: N. Slade.