

RE ELECTION PETITION RE FA'ASALELEAGA NO. 2  
Territorial Constituency No. 24

PAPALI'I LAUPEPA v ASI EIKENI

Supreme Court Apia  
3, 4, 7, 10 May 1979  
Nicholson CJ

COURTS (Jurisdiction) - Jurisdiction of Electoral Court to inquire into qualifications of voters including investigation of matters of customary law such as the conferring of matai titles: Election Petitions re Palauli North (Falefa) Territorial Constituency No. 41 ante p. 68 followed.

ELECTIONS (Qualification of voters) - Four matais challenged as having been improperly entered on the Register of Matais on the basis of allegedly falsified saofa'i certificates in that no such ceremonies had been properly held - Saofa'i certificates received by the Registrar indicating unresolved objections and appointments duly published in the Savali - No objections being received the entries were duly made by Registrar after lapse of the required period of time - Evidence satisfying the Court there had been a subsequent reconciliation whereby the objectors had accepted the situation and by Samoan custom the four were entitled to be regarded as matais and qualified to vote - Further, to disqualify them at that stage because of technicalities would be contrary to real justice as envisaged in s 115 of the Electoral Act 1963.

(Corrupt practices) - Allegations of bribery and treating against petitioner not proven beyond reasonable doubt.

PETITION to declare the election of the respondent void.

Registrar of Electors and Voters joined as second respondent.  
Petition dismissed and election of respondent confirmed.

Drake for petitioner.  
Enari for first respondent.  
Sapolu for second respondent.

Cur adv vult

NICHOLSON CJ. As a result of the General Elections held in Western Samoa on the 24th of February, 1979 the Chief Returning Officer on the 9th of March, 1979 declared the following results for the Fa'asaleleaga No. 2 Territorial Constituency No. 24:-

Asi Eikeni	125	
Namulau'ulu Uili	7	
Namulau'ulu Moli	2	
Papali'i Laupepa	<u>122</u>	
Total	=	256 Valid Votes
		2 Informal

Papali'i Laupepa now petitions the Court for an order that the first respondent was not duly elected and that he be declared to be elected in lieu of the first respondent upon the grounds that four (4) voters who appeared on the roll who cast their votes were not qualified voters and were wrongfully on the rolls. Those persons are as follows:-

<u>No. in Roll</u>	<u>Title</u>	<u>Taule'ale'a Name</u>	<u>Village</u>
61	Fuga	Faimafili	Tapueleele
134	Matuauto	Laupa'u	Tapueleele
135	Matuauto	Pone	Tapueleele
363	Tu'ua	Taiese	Tapueleele

At the hearing, in addition to evidence concerning the qualifications of these four voters, evidence was recorded regarding an allegation of bribery and treating against the petitioner, and an allegation of treating against the witness Lauaki Ailafo.

The petitioner's evidence shows that in 1975, the four titles in question were to be bestowed upon these four persons at a saofa'i to be held at Tapueleele village. The petitioning party's witnesses considered that they were entitled to be consulted concerning these appointments, but when they were invited to this saofa'i they were not told precisely what titles were involved until the ceremony commenced with a church service. Upon completion of that it was announced which four titles were to be bestowed. At this point an argument arose between the petitioner's witnesses and the faction in the village supporting the four appointments, and the petitioner's witnesses and their supporters rose and left the saofa'i ceremony uncompleted. A number of guests who had been invited also apparently left.

Subsequently, the Registrar of the Land and Titles Court, received saofa'i certificates signed by the Pulenu'u, Matuauto Gatai, a relative of the faction supporting these title holders, confirming that a saofa'i had in fact been properly held on the 15th of February, 1975, and stating that there were unresolved objections to the appointments. On the strength of these certificates the appointments were published in the Savali in accordance with the provisions of the Land and Titles Protection Ordinance 1934 and its amendments, and after the lapse of the required three month period with no objections being filed by the petitioner's witnesses, the Registrar duly entered the titles in the Matai Register on the 11th September, 1975. The petitioner's witnesses acknowledged that sometime during the same year there was a reconciliation within the villages involved in this dispute, but they denied that there was an agreement and settlement of the dispute over the conferral of these titles. They said that the reconciliation was made merely to allow the villages to carry out village affairs. They also admitted that the four holders of these titles used these titles in village affairs and partook of village affairs and ceremonies as if they were title holders after this reconciliation was effected. They denied, however, that at the reconciliation a formal saofa'i was held to confirm these titles.

It appears that no formal objection was filed with the Land and Titles Court until December of 1978 although as early as June of 1977 Muliagatele Enesi and Manu'u Kovati did attend at the Tuasivi Registry of the Land and Titles Court and raise an objection based upon a lack of saofa'i ceremony to the holding of these four titles. As a result of that report, the Pulenu'u in question, Matuauto Gatai, was called to the Land and Titles Court Registry at Tuasivi, according to the Deputy Registrar who gave evidence, and he says that the Pulenu'u acknowledged that the village made an usu, but the villagers stood up and left when they knew which matai titles were to be bestowed and the village of Tapueleele and Safotulafai withdrew leaving only the family who made the saofa'is. Later in the interview, the Deputy Registrar said the Pulenu'u admitted to him that he was wrong in preparing the saofa'i certificates and that saofa'is were not made. The matter was reported to the Police by the Deputy Registrar for investigations with a view to possible prosecution of the Pulenu'u in question. Eventually, Police

reports were received to the effect that the matter had been investigated and that the Police enquiries revealed that the matais had been appointed in accordance with Samoan custom, and that the certificates of saofa'i themselves showed no evidence of falseness. They accordingly declined to take any actions against the Pulenu'u.

The petitioner's witnesses also explained to the Court that there was a Land and Titles case between the two factions in about March of 1977 as a result of the petitioner's witnesses attempting to make their own appointments to the titles in question. The leader of this faction Fuga Fa'amata'u explained to the Court that they took the action of purporting to make their own appointments because they had made no objections to the other side making appointments without consulting them and felt that they were entitled to make their appointments without consultation. The decision of the Land and Titles Court apparently was unfavourable to the petitioner's witnesses faction.

Witnesses called by the first respondent confirmed that there had been a walk-out of villagers from the attempted saofa'i but they said that there had been a subsequent reconciliation whereby the two villages were reconciled, the family of the four title holders in question was called to that reconciliation and that as part of that reconciliation, saofa'is were held. It is not suggested however that those saofa'is were held before the certificates were made out by the Pulenu'u.

There was a good deal of conflicting evidence as to whether or not in Samoan custom, the title holders would be recognised as legitimate title holders even if there had been a reconciliation, but I am satisfied having listened to all the witnesses that there was a reconciliation at some stage during the year 1975 whereby the witnesses of the petitioner in these proceedings accepted the situation that these four men were to hold these four titles, and I have no doubt that it was as a result of this reconciliation that they did not attempt to object when the appointments were published in the Savali, in spite of their allegations that they did not see the appointments in the Savali. I think also it is very significant that they only appear to have officially pursued this objection after they had lost their own case in the Land and Titles Court in March of 1977.

I bear in mind the terms of section 115 of the Electoral Act 1963 which enjoins the Court to see that real justice is done without undue regard to technicalities. It appears to me that although the original saofa'i certificates may have been false documents and that therefore the original entry on the Matai Register may not have been justified, the reconciliation which occurred during 1975 was decisive and resulted in those title holders being recognised at that stage by the objectors.

I accept too the evidence that there was a saofa'i of sorts at the time the reconciliation was carried out in spite of denials by the petitioner's witnesses on this point so that it appears to me that by custom these men were entitled to be regarded as matais. That being so, it would appear to me to be completely contrary to real justice at this late stage to give effect to an objection filed years out of time and deprive these four persons of the right to vote. On these findings of fact I reject the petition, but I would like to make reference to the law on the subject.

I drew the attention of counsel during the hearing to the provisions of section 37(a) and 61 of the Land and Titles Protection Ordinance 1934 which appear to place in the hands of the Land and Titles Court exclusive jurisdiction in all matters relating to Samoan titles, and I invited counsel to make submissions on the question of whether or not this Electoral Court has jurisdiction to investigate such matters in the light of those particular provisions. I am aware that there have been conflicting decisions in the past in this Court and I have had the advantage of reading the decision of Donne C.J. in Elections Petitions re Palauli North (Falefa) Territorial Constituency No. 41, ante p. 68, in which the learned Chief Justice in disagreeing with a decision of Spring, C.J. on this subject came to the conclusion that there was no prohibition in section 61 of the Land and Titles Protection Ordinance 1934 against the Electoral Court investigating decisions of the Land and

Titles Court.

My conclusion on this matter is that it must be accepted that this Court is provided with a very wide discretion under the Electoral Act 1963 and that it is entitled to examine such questions as whether or not the qualifications laid down in section 16 of the Act have in fact been properly obtained even though this may involve an investigation regarding matters of customary law such as the conferring of matai titles. I think it has to be borne in mind that such an investigation is for electoral purposes only and that this Court's decision could not be binding upon the Land and Titles Court in investigating the same matter.

I do not accept Mr Enari's submission for the first respondent that if this Court found these four matais were not qualified under the Electoral Act, it would be usurping the functions of the Land and Titles Court because the effect of this Court's decision would be to remove a name from the Register of Matais and to reverse an act of the Land and Titles Court. That would not be the effect at all. The only effect would be to remove a name from the Electoral Roll, a function which the Electoral Act 1963 quite clearly gives to the Registrar of Electors and the Magistrates' Courts under Part V as well as by inference to this Court under the general powers vested by section 111(4).

Submissions were made by counsel for the second respondent in a most able argument that -

- (1) the Supreme Court has authority to intervene in proceedings of the Land and Titles Court in general; and
- (2) that the failure to object within the three month period prevented objection being made now, even if fraud was involved.

These are extremely important questions, which it is not strictly necessary for me to consider in the light of my findings of fact, and I prefer to leave such questions for more appropriate proceedings.

I turn now to the two remaining allegations. The one of bribery and treating against the petitioner, is based upon the evidence of one Manu'u Malo, a matai of Tapueleele who says that he was at the house of Amu Asuelu in the month of the Election when he saw the petitioner at Amu's house. There were some seven matais present and a presentation of four cartons of fish and one hundred tālā was made. He said that he was told that this was part of the petitioner's fine. He said he personally received \$20.00, that Amu apportioned the money, and that this was the only time that he saw the petitioner at Amu's house. He received no other explanation for the presentation and he did not understand why the petitioner should have to pay a fine. He had not seen him before or since. He admitted that when he had first reported the matter to another matai he had exaggerated the amount paid and the number of cartons of fish.

There is no corroboration for this man's evidence and on his own account he must be treated as an accomplice since he says he received money amounting to a bribe as well as food. I am certainly not prepared to rely upon his uncorroborated testimony, particularly in view of his acknowledgement that he had already told falsehoods about the amounts of money and food involved in this incident. Since there is no corroboration for his testimony I find that the allegation has not been proved beyond reasonable doubt.

Turning to the allegations of treating and bribery against the witness Lauaki, the witnesses say that they were given money by Lauaki on one occasion and food on a second occasion in the period commonly regarded as the campaign period, the second occasion being on Election Day. I have heard from the first respondent's witnesses that they received these gifts from Lauaki on these two occasions with an admonition to vote for the petitioner. The witness herself has given evidence in explanation of these incidents, and having heard her explanation, I conclude that I am not satisfied beyond reasonable doubt that the amounts paid and the food given were in fact intended for the corrupt purpose of inducing persons to vote for the petitioner. The

explanation given by the witness is that she is in the habit of giving to the matais of her area and that they are aware of it and that they are in the habit of seeking gifts from her in consequence. She said that on each occasion there were debates between the witnesses and herself over the relative merits of the two leading candidates but she denied making the gifts to induce the donees to vote for the petitioner. I found her evidence on this topic convincing and I am left in a reasonable doubt, the benefit of which must go to the witness Lauaki. I find the allegations not proved to a sufficient standard.

The petition is dismissed and the election of the first respondent is confirmed. The petitioner will pay costs of \$100.00 to each of the first respondent and the second respondent.