

FALELATAI & SAMATAU CONSTITUENCY: re LUTENA (MANO'O)

Supreme Court Apia
Callander ACJ
12, 13, 16, 17, 18, 19 & 20 August 1982
23 August 1982

ELECTION LAW - Bribery and treating - credibility of evidence.

HELD: Petition dismissed with costs to the Respondent.

T K Enari for Petitioner
R Drake for Respondent

Cur adv vult

The Respondent was the successful candidate for the Constituency of Falelatai and Samatau in the General Election held on the 27th February 1982. The Petitioner was the former member of Parliament. He seeks to avoid the election upon 12 allegations of bribery and one of treating on the part of the Respondent.

These matters were canvassed at length, the Court hearing testimony from 14 witnesses for the Petitioner and 9 for the Respondent.

After the Petitioner had closed his case I indicated to counsel that there were two allegations with which I was then concerned, it being clear that the other allegations could not be established beyond reasonable doubt. I do not intend to consider those allegations.

The two allegations prima facie established by the Petitioner were:

- (1) That Mano'o bribed the Samatau Seventh Day Adventist Church Congregation by giving \$200 to be divided between them
- (2) That Mano'o bribed 5 matais from Falelatai when they visited his office on the 2nd February 1982.

It is necessary to examine the facts of these two allegations.

a) The Seventh Day Adventist Church allegation

A member of this congregation, Asia Fereti, testified that there was a meeting on the 7th February of all those of the congregation who wished to give donations to the Church building fund. Such meetings were held regularly on the first Sunday of the month. The witness testified that Mano'o had given \$200, not to the building fund, but to be divided among all present, whether titled or not. He says he received \$5 and his wife \$2. He says such a gift had never been made before. The witness told the court that Mano'o was the Chairman of the building committee and that he was also a very generous donor to the fund, giving between \$800 and \$1,500 per month.

Mano'o denies giving the \$200 in the manner indicated. he said there was a gift made that day by a visitor from New Zealand - which was distributed to members of the Congregation - but that gift was made after he had left the church meeting to attend a luncheon for the Samatau Long Boat Committee of which he is also the chairman.

I then heard from 5 other members of the Congregation, all of whom testified that:

- (a) Mano'o did not make the gift
- (b) The gift was made by the visitor from New Zealand, Puni Raea, who gave \$500 to the building fund on behalf of himself and other Samoans now living in New Zealand, and a further gift of around \$200 to be distributed. This was a gift from a man who does not return often to Samoa.
- (c) Mano'o was not present when the personal gift was made
- (d) The meeting was on the 14th February having been postponed for a week to enable Puni Raea to attend
- (e) Asia Fereti was not even present at the meeting.

I was impressed with these witnesses. There were minor inconsistencies in their evidence, but these were natural, bearing in mind that the powers of memory and observation differ between individuals. There was no suggestion that they were untruthful.

b) The alleged Bribery of the 5 Matais

The Chief Returning Officer made 4 broadcasts over Radio 2AP. In this broadcast he explained electoral offences. He referred to the Fa'a-Samoa and said:

"We are fully conversant with most of the dignified customs of Samoa and the times for those to take place. Is it part of the dignified customs of Samoa for some matais to suddenly don good clothes to roam the town with brief-cases looking out for candidates to give them fares and alcoholic drinks just before the election? The law and indeed the Supreme Court decisions say that such behaviour is not fa'a-samoa."

On the 2nd February 5 matais travelled by bus from Falelatai. They visited his office in Apia. They then visited the other two candidates. The court has had to consider the purpose of this visit. Was it to do as the Chief Returning Officer feared, or was it an innocent approach to either discuss business matters or to make proper inquiry of the candidates as to their political intentions? Did Mano'o give pasese of an excessive sum?

The answer is not simple because some of the men are lying. Two say a woman gave them pasese on Mano'o's behalf as they left his office. Ma'a Fili says he received \$5; Poutalimati Ma'afi says he was given \$10. The other three men deny that Mano'o or his office girl gave any of the group money and that he specifically apologised for not doing so, pointing out that giving pasese at that time would be contrary to the Electoral Act. All men agreed that they then travelled to Lupematasila who gave them \$20 each. They then visited the third candidate who was ill. The fare from Falelatai is \$2 return so it is quite clear that any sum markedly in excess of this sum could be construed as a bribe.

The 5 men were skilfully examined and cross-examined in detail and there was much inconsistency as to what happened in Mano'o's office. Ma'a Fili and Poutalimati Ma'afi clearly came to Apia to put the bite on the candidates. The other three say they came to ask Mano'o why vegetable crates had not been delivered to them for the next shipment of produce to New Zealand. Various versions were given as to these discussions. The Petitioner's two witnesses say nothing was even mentioned about the taro or crates. Mano'o himself says that Poutalimati asked about the Government's attitudes to the export of produce but says nothing about the crates.

I have carefully weighed the evidence of each man. I prefer the evidence of Mano'o himself. I am quite clear that the men were there to extort money from him. I am not satisfied, however, that Mano'o made any payment. Lupematasila clearly did so: indeed, he has not even given evidence before this court to deny this evidence.

This allegation must fail, and as a consequence the Petition itself cannot succeed.

I wish to endorse the concern of the Chief Returning Officer. I believe it to be quite unfair and wrong for matais to put the bite on the candidates in such a shameful way. It is clear that some candidates feel compelled to succumb to these pressures from their villages. The pressure is so much greater in Western Samoa because of the tradition of the pasese, and the belief that the higher the rank of the Chief concerned the more generous the pasese must be in keeping with his status.

If the pasese equalled the amount of the actual bus fares then it would be unobjectionable. Of course, if this was the practice there would be no advantage to the matai who visits the candidate for ulterior and pecuniary motives. If all he received was his bus fare, he would not bother to make the trip except perhaps for social reasons.

If anything, I have sympathy for the candidates. But they must stand firm against such pressures. A man who cannot withstand minor pressures can hardly hope to stand fast against the more major pressure to be experienced in political life if he should be elected to Parliament. The capability of a man is proved by the way he withstands such pressures - as the ancient adage says: "Ua fili i le tai se agava'a".

The Petition is dismissed. The Respondent is to have costs of \$200 with witnesses expenses to be fixed by the Registrar. I shall report to the Speaker accordingly.