

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT AUCKLAND
(Civil Division)

Misc. No. 187/94

IN THE MATTER of Section 74 of the Electoral Act
1966

AND

IN THE MATTER of a Petition by **PIHO RUA**
PIHO, a Candidate and five
electors of the Constituency of
Rakahanga

Petitioners

AND

PUPUKE ROBATI of
Rarotonga, Member of Parliament

First Respondent

AND

TERE MATAIO of Rarotonga,
Chief Electoral Officer

Second Respondent

AND

SOLOMONA ELIKANA,
Returning Officer for the
Constituency of Rakahanga

Third Respondent

Mr B.H. Giles for the Petitioners
Mr M. Mitchell for the First Respondent
Mr J.M. Priestley for the Second and Third Respondents

Date of Hearing : 28 April 1994
Date of Judgment : 4th May 1994

JUDGMENT OF DILLON J.

The Petitioners have filed an Electoral Petition pursuant to the provisions of Section 74 of the Electoral Act 1966. This Petition relates to the Constituency of Rakahanga.

The First Respondent was the successful candidate and now challenges the unsuccessful candidate Piho Rua Piho, one of the Petitioners. In fact this challenge was initiated prior to the actual election but by consent of all parties the hearing and determination was adjourned.

The facts are not in dispute. Mr Piho applied for registration as an elector of the Rakahanga Constituency on 22 February 1994. The Supplementary Rolls closed on 22 February 1994. The Registrar of Electors at Rakahanga forwarded all the registration forms to the Chief Electoral Officer in Rarotonga on 24 February 1994. Upon receipt of the registration forms the Chief Electoral Officer arranged for a computer input of the Supplementary Roll on 24 February 1994. The Supplementary Roll was printed out on 25 February 1994. That completed the process for registration as an elector.

Turning now to the nomination as a candidate, Mr Piho lodged his nomination to be a candidate in the Rakahanga constituency on 23 February 1994 - that is the day following his application for registration as an elector - and the day before his name was "punched" into the computer which produced the Supplementary Roll on 25 February 1994 prior to the closing of the nominations of candidates on that date.

It is now submitted by the First Respondent that because the Supplementary Rolls closed on 22 February 1994, and the applications were not recorded on the computer until received from Rakahanga on 24 February 1994, therefore Mr Piho was not a "registered elector" at the time he completed his nomination form as a candidate as required by Section 29(2)(a), which reads as follows :

- "(2) Subject to the provisions of this Act [and to Article 28B of the Constitution], -
- (a) Every registered elector may, with his consent, be nominated as a candidate for any election, but no person shall be deemed to be so nominated unless a nomination paper in form 6 is signed on his behalf by not fewer than two other registered electors and lodged as herein provided;"

In other words, it is acknowledged that Mr Piho as a registered elector was entitled to vote in the Rakahanga Constituency; what is claimed is that he was not on 23 February 1994 when his nomination as a candidate was filed, a registered elector either on 24 February 1994 when his name was punched into the computer that compiled the Supplementary Roll; or on 25

February 1994 when the Supplementary Roll was published. The significance of these dates is that while nominations for candidates closed on 25 February 1994, the Supplementary Rolls for all constituencies closed on 22 February 1994.

The difficulties of communication and transportation to and from the outer Islands are explained in part by the Chief Electoral Officer in his affidavit when he states :

- "9. **THAT** inadequate telecommunication and transportation links between Rakahanga and Rarotonga, have meant that the Registrar of Electors for the Rakahanga Constituency has had to travel by open boat to Manihiki to make dispatches of applications for registration as an elector by Air Rarotonga to the Chief Electoral Officer in Rarotonga. This has caused the Registrar to await until he has a reasonable size package of electoral materials for the Chief Electoral Officer before venturing by boat to Manihiki. Hence, only 3 packages, one for the Main Roll and two small ones for the Supplementary Roll, have been received from the Registrar of Electors for the Rakahanga Constituency during the entire registration process from 19 January to 24 February 1994."

The challenge to Mr Piho is that on 22 February 1994 when his nomination form was completed he was not a registered elector. There is no challenge to his being a registered elector entitled to vote in the constituency of Rakahanga. This distinction is important as Mr Priestley for the Chief Electoral Officer points out. In his affidavit Mr Mataio explains what happened to the nomination papers of both Mr Piho and Dr Robati - viz :

- "8. **THAT** both the Nomination Papers for Piho Rua Piho and Pupuke Robati were filed away in a special file ready for processing by the Chief Electoral Officer upon the closing of the nominations of candidates on Friday 25 February 1994."

It is difficult to accept the recognition of Mr Piho as an elector but not as a candidate as now submitted by Mr Mitchell. If his interpretation of the Electoral Act and its implications relative to the preparation of the Supplementary Rolls is to be accepted then all electors on the outer island Supplementary Rolls will be disqualified. This follows because the Registrar of Electors must accept applications up to 22 February 1994; but, so it is suggested, the Supplementary Roll must be produced by the Chief Electoral Officer on the same date, i.e. 22 February 1994.

Mr Giles on the other hand submits that each application for registration constitutes the Electoral Roll which increases with each application accepted by the Registrar (reference Section 12(2) - "... forthwith enter the name of the applicant on the roll", or rejected by the Registrar (reference Section 12(3)), or objected to by an elector (reference Section 13), or determined by the High Court (reference Section 17).

But there has been no objection to Mr Piho as an elector. The only objection is that he was not a registered elector when his nomination as a candidate was presented on 23 February 1994.

I turn finally to the submissions presented by Mr Priestley. He referred to Section 38 which provides for the retirement or death of candidates. Consequently the time and date fixed for the closing of the nominations of candidates, namely Friday 25 February 1994, was the operative time for determining the validity of the nomination. And as Mr Priestley pointed out, at that point in time Mr Piho was a registered elector.

The Electoral Act requires the compulsory registration of electors. The Constitution provides fundamental human rights and freedoms which must be accorded paramount consideration. Section 30 of the Electoral Act requires this Court to adjudicate on the present dispute and in so doing to recognise those fundamental human rights and freedoms; to give effect to the requirements of the electoral registration; and to recognise that Mr Piho's status is accepted by the First Respondent as an elector. The primary requirement of complying with Section 29(2)(a) is that :

"... no person shall be deemed to be so nominated unless a nomination paper in form 6 is signed on his behalf by not fewer than two other registered electors and lodged as herein provided."

That is the mandatory provision of Section 29(2)(a). It is not mandatory when filing the nomination paper for the candidate to have consented (reference Section 29(2)(a) and (b)).

For those reasons I determine that Mr Piho was a registered elector entitled to vote in the Rakahanga constituency; and that on 25 February 1994 when nominations of candidates closed he was a registered elector. The application by the First Respondent is dismissed.

Costs will be reserved and will be the subject of memorandum by Counsel if required.

Devin J.
