

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
MISC.82/2004**

IN THE MATTER
of the Cook Islands Electoral Act 2004
and the General Elections held on
7 September 2004

AND

IN THE MATTER
of a Petition by **HENRY PUNA** of Manihiki, Candidate

Mr Timothy Arnold	for Petitioner
Mr Norman George	for ROBERT WOONTON Candidate
Mr John McFadzien	for Chief Electoral Officer

Saturday 11th December 2004

**PRELIMINARY DECISION
IN RESPECT OF VOTER CHALLENGES**

This is a preliminary decision dealing only with the question of voter eligibility.

ESMOND McKENZIE

This young man on the evidence of his passport was born 22nd October 1985 therefore he would have been eligible to register as a voter in the constituency he had been living in any time after 22nd October 2003 and up to when the rolls closed in July 2004. Shortly before the election in September 2004 arrangements were made in Manihiki for him to register. The day he was to complete the registration application it was discovered he had left for Rarotonga on his way to New Zealand.

In Rarotonga he cast a vote after declaring that he had applied for registration and should be on the Manihiki roll.

With the challenge against his voting searches were carried out by the Electoral Office to ascertain whether he had applied. Not surprisingly no evidence of his so applying was forthcoming.

I find this voter could have registered after his eighteenth birthday (22.10.03) he didn't and cannot claim to be qualified to vote in terms of Section 59 of the Electoral Act 2004.

I declare the vote of **Esmond McKenzie** invalid.

LOUISA MAIRI

This woman was not entitled to remain on the Manihiki roll and consequent upon an objection to so being there, was removed after the Chief Justice had ordered the removal of her name.

There is no evidence that she attempted to register on the roll of the Manihiki constituency at any time after the removal. Mr George conceded that this woman should not have voted.

I declare the vote of **Louisa Mairi** invalid.

LOUISA MAEA

The evidence before me is that this woman left the Cook Islands on 6th December 2003 returned to the Cook Islands on 29th May 2004 and left again on 6th August 2004. This evidence is not challenged and I accept it.

Effectively because she was absent from the Cook Islands continuously for a period in excess of three months she was disqualified from being an elector (Article 28(2) of the Constitution). Her return on 29th May 2004 and subsequent departure on 6th August 2004 did not allow sufficient time for her to re-qualify as an elector in the Cook Islands (Article 28(3) of the Constitution).

There was an attempt by the Respondent to establish that this person falls within the exceptions set out in Article 28(4) of the Constitution. I do not accept the evidence about her medical condition and the suggestion that this was the reason she went to New Zealand. I find she went there to accompany her daughter **Nitika Samson**.

I declare the vote of **Louisa Maea** to be invalid.

NITIKA SAMSON

The travel situation is exactly the same as for the previous person who is this elector's mother i.e. departed the Cook Islands 6th December 2003 returned to the Cook Islands 29th May 2004 departed the Cook Islands 6th August 2004.

Unless this woman is exempted from disqualification because she left the Cook Islands to have medical treatment her vote must be invalid.

I accept the evidence that this young woman has Rheumatic Fever and she was six months' pregnant when she left for New Zealand. From the evidence before me it is clear that her decision to go to New Zealand some three months before the birth of her child on 24th March 2004 was because her mother wanted her to go. There were no medical reports or documentation produced to the Court suggesting that she should go to New Zealand in December 2003 for medical treatment. The evidence before me is that up to her confinement she had the normal monthly injection for the Rheumatic Fever. After the birth of her baby she was in hospital for five days though it appears the birth did have some problems. She stayed on in New Zealand for a further two months and I find that this was for the baby's benefit.

I find that there is insufficient evidence to establish that **Nitika Samson** left the Cook Islands at the outset for medical treatment and such treatment was continuous up to when she returned.

I therefore conclude that not falling within the exception in Article 28(4)(a)(ii) of the Constitution she was disqualified from voting and like her mother she left the Cook Islands some nine weeks later with a Tere Party thus she had not re-qualified as an elector not being continuously back in the Cook Islands for three months.

I declare the vote of **Nitika Samson** invalid.

ROSARI RIPATA

The evidence in respect of this woman is that she left Manihiki 21st March 2003 and has not returned there. The Court was told she has an open return ticket on Air Rarotonga providing for her return from Rarotonga to Manihiki this has not been used up to the date of this hearing. A cousin of the elector gave evidence that her initial reason for coming to Rarotonga was to attend her father's birthday party and to his knowledge the elector is now in New Zealand.

There is insufficient evidence before the Court that would invoke the exception to disqualification as an elector in the Manihiki constituency (Section 7(b) Electoral Act 2004). There is evidence that two of her children had a bout of pneumonia in Rarotonga and her father gave evidence that she was having bleeding (woman's) problems. I find that her traveling out of Manihiki was not for medical treatment but for other reasons and therefore she was disqualified from voting in the Manihiki constituency.

I declare the vote of **Rosari Ripata** to be invalid.

SOLOMONA WILLIAM

The petition alleges that this man was absent from Manihiki for a continuous period exceeding three months since he was registered as an elector in the Manihiki constituency in 1999, and the Registrar of Electors should have removed him from the roll.

The petitioner had evidence that established during the material times Mr William leaving Manihiki being in Rarotonga and traveling to New Zealand. Mr George cross-

examined the witness and led evidence from the elector himself with a view to establishing that Mr William's absence from Manihiki is because of medical treatment and therefore in terms of S.6(a)(ii) of the Electoral Act his being away from Manihiki should not be treated as absence from the constituency. Mr William gave evidence of being absent from Manihiki and said it was for medical reasons. He gave further evidence of his being out of Manihiki up to two times for treatment in Rarotonga. He also agreed that when the cargo ship "Miss Mataroa" traveled to Whangarei in New Zealand to be slipped he flew to New Zealand staying with the ship for two months.

In answer to questions regarding his business interests he agreed he had invested hundred of thousands of dollars in shipping and he kept an eye on his twenty-two year old granddaughter who managed one of the Shipping Companies. He was adamant that she was the Manager. When answering questions regarding his health he was at times vague as to times in hospital and treatment though he clearly remembered a shipboard accident when he received head injuries and needed treatment. He told the Court that his being away from Manihiki was 80% health reasons and 20% business.

On this man's own evidence I find that at the outset and up to the present though he has sundry medical problems he did not leave Manihiki for medical treatment – he did not go to New Zealand for medical treatment. I do not accept his estimate of 80% medical treatment being why he is in Rarotonga. He receives treatment for his maladies but I find he is in Rarotonga primarily to look after his major investment in the shipping companies he is a Director of. The two month trip to Whangarei re-inforces my view on this.

Mr William was disqualified as an elector in the September 2004 elections.

I declare his vote to be invalid.

SOLOMONA ISAIA WILLIAM

The evidence before me is that this man with his brother TAMATI KOHA RIHARI WILLIAM remained in Rarotonga after leaving Manihiki with a Tere Party in November 2003 travelling overseas on 12th November 2003 returns 10th January 2004 commences work in Rarotonga with the Mataroa Shipping Company in January 2004. **Solomona** is still employed by the Company but **Tamati** returned to Manihiki 16th July 2004. The question before me is were these men disqualified from voting in the Manihiki constituency because they had been absent from Manihiki more than three months?

There was evidence that **Solomona** has called at the island once as crew on the ship since January 2004.

The Court was assisted by **Solomona William** (the grandfather of these young men) who in answer to a question said **Solomona Isaia William** lived in Rarotonga though **Tamati** lived in Manihiki. The evidence I have is clearly that both these young men left Manihiki in November 2003 and in **Solomona Isaia's** case he is still absent whilst in **Tamati's** case he was absent from Manihiki until 16th July 2004. Both these young men were ineligible to register as voters in the Manihiki constituency.

SOLOMONA ISAIA applied to register on 24th March 2004 in the Manihiki constituency – he had been absent five months from Manihiki living in Rarotonga and therefore should have enrolled in the constituency he was living in in Rarotonga.

TAMATI applied on 22nd June 2004 having been absent from Manihiki some eight months and still absent when he applied. He too should have enrolled in the constituency he was living in in Rarotonga.

Both these enrolments were invalid and neither entitled the applicants voting in the Manihiki constituency

The fact that **Tamati** returned to Manihiki does not allow his re-qualifying in terms of S.22 of the Electoral Act as a pre-requisite of such automatic re-qualification is disqualification pursuant to Section 7(4) of the Act impliedly after prior valid registration in the constituency. **Tamati's** application to register was for the wrong constituency and invalid per se.

I declare the votes of **Solomon Isaia William** and **Tamati Koha Rihari William** to be invalid.

From the above it can be seen that each of the challenges by Mr Puna has succeeded. We now move to the four electors challenged by Dr Woonton. Mr Arnold submitted that the Court could not hear these challenges because the provisions to S.92(4) of the Act does not permit what is effectively a cross-petition without notice to be presented. The Court ruled that Mr George was entitled to proceed and present evidence.

EUGENE KAINA

Mr Arnold conceded that this person was disqualified from voting in the Manihiki constituency.

I declare the vote of **Eugene Kaina** invalid.

KIMIORA TAUIRA

MAMA KU TAUIRA

Mr George led evidence to show these persons were out of the Cook Islands from 20th July 2003 for more than three months and had not returned for more than three months thus not allowing re-qualification pursuant to Article 28(3) of the Constitution.

Mr Puna gave evidence of his being aware of sickness on the part of these persons but this evidence was insufficient to allow for the Article 28(4)(a)(ii) of the Constitution exception (absence for medical treatment) to nullify their more than three months absence

from the Cook Islands disqualification as electors in any constituency in the Cook Islands.

I declare the votes of **Kimiora Tauira** and **Mama Ku Tauira** to be invalid.

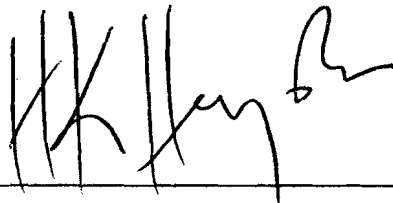
MUNUKOA WILLIAMS

The evidence is that this man left Manihiki for Rarotonga on 4th February 2004 returning to Manihiki on 26th August 2004, he was absent from Manihiki for some six months and was therefore disqualified from being on the Manihiki constituency roll S.7(4) of the Act; he returned on 26th August 2004 thus would not have been re-qualified in terms of S.7(5) of the Act.

I declare the vote of **Munukoa Williams** to be invalid.

I direct the Registrar to undertake a recount of the votes cast in the Manihiki constituency after extracting the twelve invalid votes (Section 96(2) of the Act).

These proceedings are stood down to await the outcome of the Court directed recount.



H.K. Hingston

