IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(ELECTORAL COURT) **MISC NO. 36/2012**

IN THE MATTER	of the Titikaveka by-election for the Member of Parliament of the Cook Islands held on 21st June 2012
AND	
IN THE MATTER	of Section 92 of the Electoral Act 2004 and sections 7(2) and 20(4) of the Electoral Act 2004
BETWEEN	**TEARIKI MATENGA,** Self-employed of Titikaveka Petitioner
AND	**SELINA NAPA,** Member of Parliament for the constituency of Titikaveka First Respondent
AND	**TAGGY TANGIMETUA,** Chief Registrar Of Electors Second Respondent

Hearing: 2 August 2012

Counsel: Mrs T Browne for Petitioner
Mr H Matysik for First Respondent
Ms M Henry for Second Respondent

Date: 2 August 2012

JUDGMENT OF THE COURT AS TO COSTS

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[1] On 3 July 2012 the petitioner lodged a petition under the Electoral Act 2004 raising some 20 qualification objections and one corrupt practices objection. The matter then came before Justice Doherty on 17 July at which various timetable directions were made by consent. Several days later, that is, on 19 July, the petitioner applied for leave to withdraw the petition. At that stage there was a scheduled hearing date of 2 August 2012

[2] Following the application for leave to withdraw, counsel for the first respondent lodged submissions seeking to have costs fixed. The petitioner responded a week later and I will shortly consider both of those submissions.

[3] I grant the application to withdraw and consequently the election petition is now at an end. That means I need to address the question of costs under s 101 of the Electoral Act.

[4] Ms Henry appears for the second respondent, the Chief Registrar of Electors. She advises the Court that costs are not sought by the second respondent.

[5] I now turn to consider Mrs Browne's application for costs. In her memorandum she refers to actual costs incurred of $5,203.13. She also refers to a previous judgment of mine given in *Turepu v Eggleton* in 2006. In paragraphs 12 and 13 of that judgment I dealt with the issue of a petitioner withdrawing the electoral petition prior to hearing. I noted that the petitioner should be encouraged in such a course by way of a costs discount. That remains my view and indeed counsel today have both addressed me on the basis that that is an appropriate course to follow.

[6] Mrs Browne made further oral submissions. She said that the Court's starting point for fixing costs should be the amount of actual costs incurred. There then should be an acknowledgment that the petition had been withdrawn. She said that overall in this case costs should fall within the range of $3,000 to $4,000.

[7] Mr Matysik's submissions are detailed and helpful and I would like to refer to some portions of those. In his written submissions he accepts that the costs incurred by the first respondent were entirely reasonable and my own impression is that that is an appropriate acknowledgement.

[8] In paragraph 9 he sets out various factors which he says should be taken into account including that the petition had been filed in good faith. I again accept that that is the case and that there is no basis to find that the petition was vexatious within the sense of that expression in s 101 of the Act.

[9] Mr Matysik also emphasised that the petitioner withdrew his petition at the earliest possible opportunity. Today, he emphasised that the right to challenge an election result is an integral part of ensuring democratic elections and later in his written submissions he drew the Court's attention to the decision of Justice Nicholson in *Puna v Piho* who referred to the important right to challenge an election result. I endorse such an approach.

[10] Mr Matysik draws the Court's attention to the fact that the petition was withdrawn once it was learned that certain witnesses appeared to be changing the evidence that they would give to the Court.

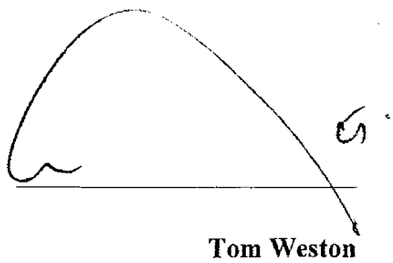
[11] Finally Mr Matysik draws attention to some recent cases where he compares costs awarded by the Court with actual costs incurred. The range of percentages fall between 22 and 33 percent of actual costs.

[12] Mrs Browne directly addressed these cases, drawing the Court's attention to the fact that there were specific factors that justified the outcome in each case. I am familiar with some of these cases and I agree that the actual outcome in each case did reflect the circumstances of what was before the Court.

[13] Turning to the particular case before me now, I note that there are some 20 qualifications challenges. They are extremely time consuming to research and investigate and a petitioner is always at risk of costs in making such allegations and then subsequently withdrawing them. My own feeling is that the range of $3,000 to $4,000 would be too steep in this case. I am conscious of the fact that a lot of work was done at the point the petitioner gave notice that he wished to withdraw his petition. However if I were to award costs in the range sought by Mrs Browne I believe that would be too much of a disincentive to withdraw petitions. Equally I think Mr Matysik's range of $1,000 to $1,500 is too low.

[14] Taking all factors into account I believe that costs in the sum of $2,200 would be appropriate and I order that the petitioner pay to the first respondent the sum of $2,200.

[15] As I noted earlier, the second respondent does not seek costs and accordingly no order is made in relation to the second respondent's position.



Tom Weston
Chief Justice