

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)**

MISC NO. 942/2022

BETWEEN **MARGHARET MATENGA** of
Titikaveka, Candidate
Petitioner

AND **SONNY WILLIAMS** of
Titikaveka, Candidate
First Respondent

AND **CHIEF ELECTORAL
OFFICER**
Second Respondent

AND **CHIEF REGISTRAR OF
ELECTORS**
Third Respondent

Hearing: 6, 8 and 9 March 2023

Appearances: B Mason for the Appellant
I Hikaka and B Marshall for the First Respondent
L Annandale (Acting Solicitor-General) and M Pittman for the Second
and Third Respondents

Result Judgment: 10 March 2023

RESULT JUDGMENT OF TOOGOOD, J

Introduction

[1] On 13 June 2022, the 49th session of the Parliament of the Cook Islands was dissolved by the Queen's Representative. After the appropriate formalities had been completed, the general election was held on 1 August 2022. On 11 August 2022, the Chief Electoral Officer declared by public notice in the Cook Islands Gazette that Mr Sonny Williams, the first respondent in this proceeding, was duly elected as the Member of Parliament for the Titikaveka constituency.

[2] The Chief Electoral Officer also declared that the candidates who contested the election in the Titikaveka constituency received the following numbers of votes:

- (a) Teava Iro (Independent) 69 votes
- (b) Margharet Matenga (Cook Islands United Party) 228 votes
- (c) Selina Napa (Democratic Party) 212 votes
- (d) Sonny Williams (Cook Islands Party) 231 votes

[3] Ms Matenga, the applicant, was dissatisfied with the result, having polled only 3 votes fewer than Mr Williams.¹ She now petitions the Court for an inquiry into the conduct of the election under s 92 of the Electoral Act 2004.

The Applicant's claims

[4] In essence, Ms Matenga argues that, at the time of the election, three of the electors who cast votes in the Titikaveka constituency were, having regard to Art 28 of the Constitution, either not qualified to vote or had been disqualified from voting, at the date of the election. Relying on s 7 of the Electoral Act 2004, she argues that a fourth elector who voted in Titikaveka was not entitled to vote in that constituency. I refer to the four electors as “the challenged electors”.

[5] Ms Matenga asks the Court, upon inquiry into those grounds, to hold that the votes of the challenged electors should be declared to be invalid and to determine that Ms Matenga, and not Mr Williams, was duly elected to represent the constituency of Titikaveka in the Parliament.

[6] It was agreed by all counsel on behalf of the parties that:

- (a) if the votes cast by two or more of the challenged electors were declared to be valid, the outcome of the election as declared by the Chief Electoral Officer would not alter and that Mr Williams must be determined to have been duly elected; and

¹ On 28 September 2022, a recount of the votes cast in the Titikaveka constituency was conducted under s 79, Electoral Act 2004 on the application of one of the candidates, Selina Napa. The outcome affirmed the votes received respectively by each of the candidates and the result of the election.

- (b) if the votes cast by three or all four of the challenged electors were declared to be invalid, a further inquiry into the nature of the votes cast would be necessary before the Court could determine which candidate was duly elected.

Delay in Parliament meeting after the general election

[7] Article 29 of the Constitution provides (emphasis added):

29 (1) Parliament shall meet at such places and at such times as the [Queen's Representative] from time to time appoints in that behalf:

Provided that Parliament shall meet not later than 90 days after the holding of a general election and at least once in every year thereafter, so that a period of 12 months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session.

(2) Notwithstanding anything contained in subclause (1) of this Article, Parliament shall not meet after the holding of a general election until all election petitions filed in the High Court in respect of that election have been finally determined [[by the High Court at first instance or have been withdrawn or dismissed for want of prosecution]].

[8] As I observed during the hearing, this case is important to the candidates; the electors whose votes have been challenged; the Parliament and the people of the Cook Islands. The petition has been heard by the Court at the first available opportunity. Because Art 29(2) has prohibited Parliament from meeting during the more than seven months since the general election was held on 1 August 2022, it is desirable that the Court should finally determine the petition as soon as is reasonably possible consistently with the interests of justice.

[9] I have heard the relevant evidence adduced by or on behalf of the parties and I have received comprehensive and helpful written and oral submissions from experienced counsel. Although the matters of fact and law I have been required to consider are not free of complexity, the assistance I have received from counsel has enabled me to reach clear views on the issues and to decide the result.

[10] Rather than delay the determination of the petition pending the preparation of a full explanation of the reasons for my decision, I now give judgment in the matter and certify the determination.

Determinations

[11] For the reasons to be given in a separate judgment, issued as soon as is reasonably possible, I determine that, at the date of the general election on 1 August 2022:

- (a) Ina Bishop was disqualified under Art 28(2) of the Constitution from being an elector for a Member of Parliament for any constituency and that her vote in the Titikaveka constituency should not have been counted.
- (b) Brendan Platt was not qualified under Art 28(1)(b) of the Constitution to be an elector for a Member of Parliament for any constituency and that his vote in the Titikaveka constituency should not have been counted.
- (c) Aere Vainu was qualified under Art 28(1) of the Constitution and ss 7(1), 7(2) and 7(6)(a)(ii) to be an elector for a Member of Parliament for the Titikaveka constituency and that her vote was validly counted.
- (d) Tuaine Papatua was qualified under Arts 28(1) and 28(4)(a)(ii) of the Constitution and ss 7(1), 7(2) and 7(6)(a)(ii) to be an elector for a Member of Parliament for the Titikaveka constituency and that his vote was validly counted.

[12] I determine that, in the general election held on 1 August 2022, Sonny Williams was duly elected as the member for the Titikaveka constituency. Under s 104(1) of the Electoral Act 2004, I hereby certify that determination to the Chief Electoral Officer accordingly.

Costs

[13] I reserve the question of costs for the exchange and filing of memoranda by counsel. A timetable order will be included in the reasons judgment.



C H Toogood J