

**IN THE HIGH COURT OF NIUE
(CIVIL DIVISION)**

APPLICATION NO. CV09/2020

IN THE MATTER OF Section 90, Niue Assembly Act 1966

BETWEEN FLORENCE MAUREEN VILITAMA
MELEKITAMA
Petitioner

AND CHIEF ELECTORAL OFFICER
Respondent

Judgment: 12 August 2020 (NZ)

JUDGMENT OF COXHEAD CJ

Introduction

[1] This is a petition demanding an inquiry into the procedural process undertaken in the 2020 General Election affecting Mutalau Constituency Seat.

[2] The petitioner, Florence Melekitama, asked for a finding that irregularities have occurred in the election process. While she does not seek a change to the election result, she asks that this type of irregularity does not occur again in future general elections. She submits that this is something for the Chief Electoral Officer to be made aware of and that amendments are required to the existing Assembly Act.

Background

[3] The general election was held in Niue on 30 May 2020. The outcome of the Mutalau Constituency was that two candidates received equal votes. There was a draw. The Chief Electoral Officer undertook a recount. The results of that recount, performed in the presence of a Commissioner of the Niue High Court, also resulted in a draw. The successful candidate was therefore chosen by drawing names out of a hat.

Issue of petition

[4] Ms Melekitama submits that the Electoral Officer was informed of the need to visit the petitioner's grandmother at her grandmother's home, so that her grandmother could cast her vote. The petitioner requested the Electoral Officer to visit her grandmother's residence. She submits that this did not occur and therefore her grandmother was excluded from exercising her lawful right to cast her vote. She is of the view that if the Electoral Officer had visited her infirm grandmother to take her vote, the outcome of the election would have been in her favour. This in her view amounts to an irregularity.

[5] The petitioner further states that this petition does not seek to declare the outcome of the election invalid, but rather she wishes to ensure that the irregularity that she complains about is not committed in the future.

[6] For that reason, the petitioner has filed a petition under s 90 of the (Niue Assembly) Act (1966), as she believes there has been a failure on the Electoral Officers' part to obtain her infirm grandmother's vote and this did affect the outcome of the election.

Submissions in response

[7] When the petition was received, I directed that it was to be served on the successful candidate, Mr Makaseau Ioane, as well as Crown Law.

[8] Mr Ioane has filed a response where he states in summary that:

- (a) The successful candidate was Makaseau Ioane;
- (b) He was aware of the petition;
- (c) The situation of a draw occurred in the 2017 election where his name was not chosen out of a hat but he accepted the outcome graciously;
- (d) A recount was completed in the presence of the Commissioner of the Niue High Court;
- (e) He was a successful candidate when his name was drawn from a hat and was sworn in on 10 June 2020 and attended his first meeting on 24 June 2020;
- (f) He has undertaken investigations and has been told that returning officers did visit the petitioner's grandmother's residence;
- (g) Those officers filed their report with the Chief Electoral Officer soon after the election;
- (h) He questions whether three of the elderly village residents who signed the petition fully understood what they were signing; and
- (i) He is aware that one of the electors who signed the petition has withdrawn her signature.

[9] Submissions and a response have also been filed by the Chief Electoral Officer.

[10] The respondent submits that s 90(1) of the Act requires that the petition must be signed by the petitioner and five electors. Given that on 30 June 2020, one of the electors, Mrs Petesemeta Sietu has withdrawn her name and support for the petition, the respondent submits that the petition is not valid.

[11] If the application was filed correctly, the respondent submits that:

- (a) The petitioner is incorrect in claiming an irregularity was committed in the election process at the Mutalau Constituency on polling day;
- (b) The respondent denies that the petitioner's grandmother was denied her lawful right to cast her vote and submits that the petitioner's claim that her grandmother was excluded from voting is false; and
- (c) The respondent has submitted a report of the returning officers which explains in significant detail the events of polling day relating specifically to their attempts to allow the petitioner's grandmother to cast her vote under special circumstances. Two returning officers attended the house of the petitioner's grandmother to allow her to cast her vote. They made a number of attempts to assist the grandmother to cast her vote. However, their attempts to explain the reasons for their presence and to explain the voting process were to no avail in that the petitioner's grandmother was not in the right state of mind to vote. After going to great lengths to accommodate the grandmother's condition and assist her to cast her vote, the petitioner's grandmother clearly did not understand or comprehend sufficiently to cast a vote. As well as the two returning officers, the petitioner's daughter also tried repeatedly to assist her grandmother to vote. However, the petitioner's grandmother was still unable to comprehend the situation and could not express her views in a manner that was clear, logical and demonstrated she understood the voting process.

Discussion

[12] Section 90(1) of the Niue Assembly Act 1966 states:

90 Election Petitions

- (1) Where any candidate and 5 electors, or where any 10 electors, are dissatisfied with the result of any election held in respect of which that candidate is nominated, or in which those electors are registered, they may, within 14 days after the declaration of the result of the election, by petition filed in the High Court as hereinafter mentioned, demand an inquiry as to the conduct of the election or of any candidate or any person at it.

[13] With the withdrawal of Mrs Sietu's signature the petition is incomplete and does not comply with s 90 of the Act. For this reason, the application will be dismissed.

[14] If the petition had been correctly filed, I am of the view that no irregularities have occurred. Based on the information before the Court it is clear to me that returning officers made significant attempts to assist the petitioner's grandmother to cast her vote. They could not vote for her. They could not make her cast her vote and were correct in encouraging and assisting the petitioner's grandmother as much as possible but not to a point where they would have been casting her vote for her. The petitioner's grandmother needed to cast her vote and she was unable to.

Decision

[15] The application is dismissed.

Pronounced at Rotorua, Aotearoa/New Zealand on the 12th day of August 2020.

C T Coxhead
CHIEF JUSTICE