

Sione Tu'ifua Vaikona v Teisina Fuko (No. 1)

Supreme Court, Nuku'alofa

Webster J.

Civil case No 14/1990

2, 3, 4, 24 April, 1990

10 *Election - election petition - false declaration not a ground for disqualification*

The petitioner filed an election petition, paragraph 6 of which alleged that the respondent had committed an offence in that he made a false declaration in his nomination form that he was not in arrears under any court judgment. Counsel for the Respondent submitted that there was no case to answer on this paragraph of the petition.

HELD:

20 Neither the Constitution nor the Electoral Act 1989 make it an offence to make a false declaration in a nomination form for election, nor do they render it a ground for disqualification or declaring the election void.

There was no case to answer on paragraph 6 of the petition

Statute considered : Electoral Act 1989

Case considered : Sanft & Siale v Paasi App 7, 8, 9/1987

Counsel for the petitioner : Mr W. C. Edwards

Counsel for the respondent : Mr L M Niu

After the Petitioner's evidence had been presented in this election petition, the Respondent's Counsel Mr Niu submitted that there was no case to answer on paragraph 6 of the Petition, which reads -

"6. As a further and a new offence the Respondent did falsely declare in his nomination form that he was not in arrears under any judgment given in a Court in the Kingdom for the payment of any sum whereas in fact and in truth the sum of \$ 1,383.00 referred to in paragraph 5 hereof was still owing (sic) by the Respondent."

He submitted that there was nothing in the Electoral Act, 1989 about false statements by a candidate, and so nothing in this paragraph of the Petition which needed a reply. In any event a false statement would not disqualify a candidate in any way. The Act only provided for the avoidance of elections for bribery, threats or excessive election expenses; and in addition there could be disqualification under clause 65 of the Constitution.

In reply Mr Edwards for the Petitioner submitted that section 20 of the Electoral Act applied to make it an offence to give false information in a nomination form. If not, it was an offence under section 62(1) (perjury) or 63(1) (false statements) of the Criminal Offences Act. Even if these did not themselves disqualify the Respondent the false declaration was relevant in conjunction with the general case on clause 65 of the Constitution. The Court also had power to make a declaration that there had been a false statement in the nomination form. If the Court could not consider the matter there would be no sanction for making a false declaration in a nomination form.

In trying this election petition the Court is limited in the determination it can make to any powers it has under the Constitution, express or implied, and to those given under the Electoral Act.

Regarding the Constitution, in relation to this case and clause 65, the Privy Council in *Saifi & Siale v Paasi* (Appeals 7,8 & 9/1987) said -

"We are concerned with Siale's election to the Assembly rather than his right to vote and we cannot accept that the law is powerless if a disqualified person is so elected. Apart from anything else his presence as a member in the Assembly is contrary to Article 65 of the Constitution.....We conclude therefore that Martin J was right when he held that Siale was not eligible to be elected." (p8)

Under the Electoral Act, section 37 provides that at the end of the trial the Court is to determine whether the member was duly elected or returned, or whether the election was void; and is to certify this to the Speaker. This therefore leads the Court back to find what other sections provide as grounds for making the determination. Section 32 (avoidance of election of candidate) refers to offences under section 21 (bribery), 22 (threat etc.) or 24 (permitted election expenses) while section 33 (avoidance of election for general corruption) deals with widespread corrupt or illegal practices. These five sections each specifically refer to an election being or being declared void and I cannot see any other sections with similar references, so I believe these are the only matters the Court can consider apart from questions of disqualification with reference to clause 65 of the Constitution.

No offence under section 21, 22 or 24 or no extensively prevalent corrupt or illegal practice under section 33 is alleged in this Petition, so the Court must confine itself to the question of the qualification of the Respondent.

It may be said that the Electoral Act, 1989 is based on the UK Representation of the People Act 1983 which leaves many matters implied because they were rooted in the practice of the House of Commons (*Parker's Conduct of Parliamentary Elections (1987)* para 16.04). Where the petition alleges corrupt or illegal practices, the election court in the UK must investigate them (*Halsbury's Laws (4th Ed)* Vol 15 paras 834, 901): but these considerations are not applicable in Tonga because in contrast to the UK Act (eg s.159(1)) there is no offence or ground of illegal practices under the Tongan Act except if the illegal practices are extensively prevalent under section 33, which is not alleged here. As the Tonga Legislative Assembly has not made either false statements on nomination forms or unspecified illegal practices either criminal offences or grounds for avoiding an election under the Electoral Act, it would be wrong for this Court to start dealing with them as such.

Section 31 (4) of the Act might be said to give the Court jurisdiction to inquire into the alleged false statement but in this case for the reasons already given and those which follow I do not believe that it is relevant or appropriate to make such an inquiry. Mr Edwards did not rely on or raise section 31(4)

Even if the Court were to find that the nomination had been falsely completed, I cannot see that it would take matters any further than the basic question of qualification which the Petition raises. As Martin J. said in his preliminary ruling in *Paasi v Sanft & others (5/87)* -

"The court does not have a discretion whether or not to set aside his election. If he was not properly qualified for whatever reason the court must declare his election void."

At the end of the trial I doubt if the Court has any duty beyond making a determination in accordance with section 37, and in particular I doubt if the Court would be right to make a declaration on false statements, as Mr Edwards requests, but this can be dealt with more fully later.

On the other points raised by the Petitioner's Counsel, section 20 of the Act is not relevant as it only deals with false information given for compiling the roll or affecting a person's eligibility to vote. Sections 62 and 63 of the Criminal Offences Act may be relevant to false statements but are not applicable when a civil court is considering an election petition. The inter-relationship of actions which are both election offences and criminal offences is set out in section 32 of the Electoral Act and does not include making false statements. There is no other direct reference in the Electoral Act to offences under other Acts or to the Court giving consideration to them. Section 18 (offences) of the Legislative Assembly Act was repealed by Act 23 of 1989.

Mr Edwards also submitted that if this Court would not consider the matter there would be no sanction for a false statement on a nomination form. But if the statement on the nomination form can be shown to be false, then it must follow that the candidate is not qualified and cannot sit in the Assembly, which is a very heavy sanction. Mr Edwards has of course also drawn the Court's attention to sanctions under the Criminal Offences Act.

Finally paragraph 6 of the Petition does not make any allegation of any specific intention by the Respondent in relation to the nomination form. Nor has there been any proof showing whether the statements in the form were made either wilfully or knowingly or both, as variously required by section 20 of the Electoral Act and section 62(1) and 63(1) of the Criminal Offences Act. A mere declaration that a statement is false is in practice unlikely to take matters further in the sphere of criminal law.

For all these reasons the Court therefore rules that there is no case for the
130 Respondent to answer on paragraph 6 of the Petition.