

ELECTION PETITION RE PALAULI (LE FALEFA)
Territorial Constituency No. 41
(No. 2)

MAPUILESUA PELENATO v LEOTA PITA

Supreme Court Apia
1, 2, 10 May 1979
Nicholson CJ

ELECTIONS (Corrupt practices) - Bribery contrary to s 96(3)(a)
Electoral Act 1963 - Standard of proof required in election
proceedings is proof beyond reasonable doubt.

EVIDENCE (Corroboration) - Evidence of accomplices (Necessity for
Corroboration) - Accomplices may corroborate each other:
DPP v Hester [1972] 3 All ER 1056 applied.

PETITION for a declaration that the Election of 24 February 1979 was
void.

Chief Returning Officer joined as second respondent.
Petition granted.

Epati for petitioner.
Va'ai for respondent.

Cur adv vult

NICHOLSON CJ. As a result of the General Elections held in
Western Samoa on the 24th of February, 1979 the Chief Returning Officer
officially declared the Election results in the Palauli (le Falefa)
Constituency as follows:-

Ulu Fa'asisina	16
Laumau Salamina	10
Leota Pita	89
Mapuilesua Iosefa	25
Mapuilesua Pelenato	68
Tiatia Mapesone	<u>57</u>
Total	= 265 Valid Votes
	2 Informal Votes

The petitioner filed a petition seeking that the results of the
Election be declared void and a new election ordered upon the grounds
first, that on Election Day the first respondent was guilty of bribery
of voters and secondly, that on Election Day the first respondent was
guilty of treating voters. At the commencement of the hearing before
me, counsel for the petitioner withdrew the allegation of treating and
led evidence which related to one incident of alleged bribery only.
The Court, in addition, ruled that the Chief Returning Officer be
dismissed from the suit.

Sau Fiai'i, a matai of Tafua in the Palauli (le Falefa) Constituency, explained to the Court that on the morning of Election Day he observed the respondent in the house of Taito Tavai in his village. He said he was in the company of one Sao Mafiti and another person, whom he did not know. He said that the respondent was related to Taito. After the arrival of several matais of the village, the respondent spoke to them saying that their road was in a bad condition and should be renewed. Kava was then called on each side, and then the respondent gave Sau \$20.00, which he then handed to an orator of the village, Ulu. The money was shared amongst the nine persons present, who were all matais and therefore voters. The respondent gave no reason for his visit, or for giving the money, and according to the witness it was not normal for him to visit their village and, indeed, he did not see him at the village at any time prior to the Election. He said that this incident occurred in the early morning sometime after 7:00 a.m. He acknowledged in cross-examination that kava was served to the respondent, but he was definite that the money was paid by the respondent and not by that unknown person. The witness said that after kava the first respondent thanked them, but that the unknown man made no speech at all. He said that in their village if a usu is to be performed then it would have been normal for the respondent to have informed all the village himself, but he said in this case the orator Ulu came and informed all of them.

Another matai of Tafua, Lataimoega Sione, said that he was present at this kava ceremony. He said that he was walking in the vicinity when the respondent called him to the house and that he came and joined with other matais in Taito's house. He said that there were two Leota's present, and neither of them made any formal speech. One of them was the respondent Leota Pita and the other was Leota Lomitusi. After kava, money was given by Leota Pita to Sao Mafiti, who in turn handed it to the orator Ulu. The sum was \$20.00 and it was distributed among the matais present. He said he did not hear the respondent say what the money was for. There were nine matais present, apart from the party of the respondent, all of Tafua. He said that Leota Pita did mention that their road was bad and should be repaired. He did not make any mention of the payment being made merely to comply with Samoan custom and he denied that it was Leota Lomitusi who handed over the money in the first place. He personally received \$2.00 as his share of the distribution. He said he thought the payment was improper and not in accordance with fa'a-Samoa because it was Election Day.

The third witness Poulava Ma'ave, who is Pulenu'u of the village, gave evidence to the effect that this meeting was called without his knowledge, and that he suspected that the respondent was giving out moneys. He knew of no other reason for his coming to the village on that day and that it was unusual for him to visit the village and to hold a meeting without consulting him first.

The respondent gave evidence as to the incident saying that he had come to Tafua to bring his scrutineer Sao Mafiti in their vehicle, which was in a poor condition. They had left early in the morning and they were in the company of Doctor Leota Lomitusi, the object being that they were to take the Doctor on to Maota Airstrip after dropping the scrutineer at Tafua and after the Doctor voted so that he could attend to his duties at Apia Hospital. He said their vehicle was unable to complete the journey up the hill into Tafua and they walked into the village to the house of Taito, his relative, to await the opening of the polling booth so that his scrutineer could attend to his duties, and so that the Doctor could cast his vote early prior to proceeding over to Apia. He said that at Taito's house he saw matais walking about and one matai told him that the village was getting together for an usu. He said about fourteen people were in the house altogether, and they all shook hands. Kava was given to Sao Mafiti, as orator of their party, and Leota Lomitusi sat on his right and Sao on his left in front of the house. They had an usu and there were deliberations as to who of the host orators would give the welcoming speech. Ulu spoke, Sao Mafiti also spoke, and kava was drunk. Leota Lomitusi received the first cup as the respected visitor that morning, he being the honoured

guest. The respondent said that because he felt that he was a matai of Tafua he was not merely a visitor. As visiting matais his companions would be expected to give money and food. He said Doctor Leota gave the \$20.00 to Sao and that it was untrue that he gave the money personally. He said that after kava, Sao spoke apologising that the respondent as a candidate in the election could not make gifts on that day.

Doctor Leota Lomitusi also gave evidence that he was in the company of the respondent and he generally corroborated his account of events. He said that he gave the money and the respondent did not contribute to it. He said he understood that the usu was for all three of their party and the thought was in his mind that his \$20.00 would pay for all three of them, but he knew that Leota Pita the respondent should not have been present since it was Election Day, so he gave it for himself only. He felt the payment was in accordance with fa'a-Samoa. All that was said at the time of handing over of the money was that it was a gift from him, and that the candidate was unable to make a gift. He said the matais present may well have thought it was the respondent's money, but it was not.

The respondent produced evidence of counter allegations of bribery on the part of the petitioner. These relate to two incidents, the first occurring on or about the 17th of February, 1979 and the second on the day before Election Day, namely, the 23rd of February, 1979.

The first incident, according to the witness Fiu Falefa, occurred at Gautavai on the Saturday prior to the Election. He says that he met the petitioner at the house of Leota Savelu about 9:00 or 10:00 a.m. The petitioner handed him one tala and promised to give him more when he came back in the evening. He showed him his empty wallet at that stage to indicate that he had no money available. Fiu said he returned to Leota Savelu's house in the evening at prayer time. There was no kava ceremony held, but they had food, and then they were told money would be distributed, and the petitioner gave him \$5.00. Fiu said the petitioner at the time of the money distribution said that Election Day was near. The petitioner was not a frequent visitor to Gautavai and on that evening some ten matais were present. Each of them received \$5.00 which the petitioner handed to a person who distributed it for him. He said that he assumed it was given to him as a bribe to vote for the petitioner on Election Day. Fiu denied the suggestion that the gift was expressed as made by a person returning to Western Samoa from overseas travel. Fiu agreed that the petitioner did say that the matais should vote as individuals and not by village blocks.

Sao Samuelu, another matai of the same village, gave evidence along the same lines as Fiu. He said that the petitioner asked them to be pleased and vote for him when he handed out \$5.00 to each person. He said there were some ten matais present.

As to the second incident of the 23rd of February, 1979 Toala Pa'i, a matai of Sili in Savai'i, had a message to go to the house of Tumanuvao. It was the Friday before the Election, and there were a number of other electors present. He said the petitioner made a speech to please vote for his name, and the petitioner then took some money out and put it in front of him. He personally gave each person present \$5.00. Spirits and beer were then consumed at the house, of which some seven people partook. He said that the petitioner was not in the habit of giving out money like this.

Fiu Alo'ese, another matai of the same village, corroborated the account given by Toala. He said that the \$5.00 was given to each of them for sugar, and that bottles of spirits and beer were also given. The five of them present then held a party. He said that the petitioner told them to remember the Election when he gave the money.

The petitioner was called in rebuttal and denied that he had committed bribery on these two occasions. He acknowledged that he did go as alleged to the house of Leota Savelu to apologise to Leota over a family matter involving two young people in the family, Apete and Silia. He and Leota were related, and he felt that Leota was displeased with him over the failure of the marriage arrangements, and he had gone to explain his position. He said he had been in the United States and had returned one week prior to Christmas. While he was visiting Leota

other matais arrived and he believed they had come in accordance with Samoan custom to greet him as a visiting matai from another village. He said they may have known that he just been overseas and they would like to see him and to receive gifts of money from him as a result. He said that he did show a matai an empty wallet and he did promise to return in the evening with more money. He acknowledged that he had given him one talā but it was only a question of his complying with fa'a-Samoa. He did acknowledge that he told him to come back in the evening and that he would give him more. He had already distributed \$5.00 to each of the matais present that morning and he was embarrassed over the fact that he only had one talā to offer Fiu. He denied making any speech seeking votes, and he did return in the evening and distribute further sums of \$5.00 each to a number of matais, but it was for the same general reason. He said that there was general conversation, and the Election was discussed and he did express the view that there should not be block voting, village by village. His only intention in making the payments was to show respect in the normal Samoan custom, and that it would be expected of him to give plenty of money as a traveller returning from the United States.

The petitioner acknowledged too that on the night before the Election he went to the house of Tumanuvao to discuss family matters, and he thought that some four matais came there. He denied that he sent for them, and he assumed that the matais gathered in expectation of gifts from him as a traveller returning from overseas, and he gave each of them \$5.00. He denied telling them to vote for him. Again, the Election was discussed, but he emphasised the need for the matais to vote as individuals rather than in village blocks. In cross-examination he acknowledged that he completed his apology to Leota Savelu on the 17th of February in the morning and that the only reason for his return in the evening was to show respect and to protect Leota's position and to treat all the matais equally. He said that food was supplied by Leota Savelu and that the matais who came in the evening brought food as well. He denied that he came back in the evening because he had seen so few matais in the morning. He said that he took less than \$100.00 back in the evening when he went back to Leota's house, but he was expecting more matais there in the evening because he assumed that the word would go around the village that he was returning.

I remind myself that the standard of proof of such allegations in election matters is the criminal standard of proof beyond reasonable doubt. Dealing with the allegation of bribery against the respondent, after careful consideration of the evidence and the demeanour of all the witnesses involved, I conclude that the evidence of the two witnesses for the petitioner is to be accepted rather than the evidence of the respondent and his witness, Doctor Leota Lomitusi. The circumstances in which this money was paid are obviously extremely suspicious since payment was made early on the morning of Election Day.

I am satisfied from the evidence of the two petitioner's witnesses that in fact the money was from the pocket of the respondent and not from Doctor Leota Lomitusi. In arriving at the conclusion that I accept their evidence, I remind myself that both of these witnesses, because they accepted these moneys, must be regarded as accomplices in this alleged act of corruption, and that it desirable that there should be corroboration for their evidence. There has been no particular reason advanced for their giving false evidence, and I found their demeanour thoroughly satisfactory. They corroborate each other on a number of important particulars as to what occurred at the meeting, and although each of them by himself must be regarded as requiring corroboration, there is no general rule of law against mutual corroboration. It is the law that individuals requiring corroboration can corroborate each other. I refer in this respect to D.P.P. v. Hester [1972] 3 All E.R. 1056. The respondent and Doctor Leota have given an explanation for the respondent's presence in the village on that morning. I do not accept it. I find it strange that he should be present on his own admission at a ceremony where the distribution of money to voters was made on Election morning.

It seems to me that there would have been no difficulty in the scrutineer obtaining some other form of transport to Tafua, and for the candidate to appear on Election morning at a village where he has not bothered to appear at all as a regular thing and to distribute money among voters, to my mind warrants the overwhelming inference that he was distributing money for the purposes of influencing voters to vote in his favour on that Day. I am satisfied beyond reasonable doubt that the respondent committed bribery in terms of section 96(3)(a) of the Electoral Act 1963.

Turning now to the two allegations of bribery against the petitioner, again there appears to be no dispute that these payments of money were made on these two occasions. The explanations for these payments are the same, and they are explanations which I reject as untrue. I find it impossible to accept that in middle or late February the petitioner would still feel obliged to make payments as a new returnee from overseas by Samoan custom when he had been back in the country since the middle of December. I note too that in each of these cases the visit was an unusual occasion for him, and that with the imminence of the Election these generous payments to each of the matais who were present on these two occasions appear to me to be completely unjustified as mere compliance with traditional Samoan courtesies. I draw the inference that these payments were made on each of these two occasions with the intention of persuading the matais present to vote for the petitioner. There is some contradiction among the witnesses as to the precise words that were used by the petitioner at the time of these payments, but it is clear even from the petitioner's own evidence that the matter of the Election was under discussion, and under these circumstances I am satisfied that the matais receiving these sums of money would be left in no doubt that the purpose of them was to induce them as voters to vote for the petitioner on Election Day. I find the two allegations of bribery against the petitioner in terms of section 96(3)(a) of the Act proved beyond reasonable doubt.

In view of my findings the prayer in the petition is granted, and I declare that this Election was void, and I shall report to the Honourable Speaker of the House accordingly.

I make no orders as to costs.