

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

IN THE MATTER of the Electoral Act and
Amendments

A N D

IN THE MATTER concerning the election
of a Member of Parlia-
ment for the Territorial
Constituency of Aana
Alofi No.3

BETWEEN: AFAMASAGA FATU VAILI of
Fasitootai, a candidate
for election

Petitioner

A N D: TOALEPAIALII SIUEVA POSE
III SALESA of Satapuala,
a candidate for election

Respondent

Counsel: T R S Toailoa for petitioner
A S Vaai for respondent

Hearing: 30 & 31 May 1996; 6, 7, 12, 13, 14 & 18 June 1996

Judgment: 26 June 1996

JUDGMENT OF SAPOLU, CJ

A general election for the country was held on Friday, 26 April 1996. After the official count by the Chief Electoral Officer of the votes cast at the election the results of the poll were publicly notified on 14 May 1996. The results of the poll for the Aana Alofi No.3 territorial constituency were

publicly notified and declared as follows :

<u>Candidates</u>	<u>Votes Received</u>
Afamasaga Fatu Vaili	751
Lealaisalanoa Kaisa	105
Letelemaana Talalelei	396
Toalepaialii II Siueva Pose III Salesa	773
Tutuila Eti Williams	<u>81</u>
Total number of valid votes	2,106
Number of votes rejected as informal	26

Toalepaialii II Siueva Pose III Salesa was therefore declared to be elected.

By an election petition dated 14 May 1996 Afamasaga Fatu Faili seeks a declaration that the election of Toalepaialii II Siueva Pose III Salesa who is the respondent in these proceedings is void on the grounds of bribery, treating and undue influence under the provisions of the Electoral Act 1963. The petitioner further seeks a declaration that he be declared as duly elected for the Aana Alofi No.3 territorial constituency.

Now the onus of proving the allegations made in the election petition lies on the petitioner. The required standard of proof is the criminal standard which is proof beyond reasonable doubt : *Election Petition re Gagaifomauga No.2 Territorial Constituency [1960-1969] WSLR 169 per Spring CJ and Election Petition re Safata Territorial Constituency [1970-1979] WSLR 239 per Nicholson CJ.*

Dealing now with the allegations of bribery made against the respondent in the order those allegations are presented in the petition, the first allegation is that in the early morning of polling day, Friday, 26 April 1996, the respondent gave \$100 to elector Veta Afesulu of Fasitootai for the purpose of inducing that elector to vote for the respondent. According to Veta Afesulu she was asleep with her family in the early morning of polling day when she heard someone knocking on the door of her house. She estimated the time to be about 5.00am in the morning. She called out to the person who was knocking on the door to come in and he came in and said he was Toalepaialii who is the respondent. After a brief conversation the respondent asked her whether the 'Taulagi' was unanimous with its decision on who to vote for and she replied that was a matter for each individual to decide. The expression 'Taulagi' is a salutation pertaining to the village of Fasitootai from which the petitioner comes. When the respondent stood up to leave he turned and threw some money inside Veta Afesulu's house. Veta Afesulu picked up the money and when she counted it, it was \$100. Veta Afesulu testified that was the first time the respondent had given her any money. She then gave her adopted daughter Lucy Iese \$10 for herself and \$10 to be given to Lucy's natural mother.

The evidence of Lucy Iese was that in the early morning of polling day, she was sleeping with Veta Afesulu when she was awaked by someone knocking on the door of Veta Afesulu's living room. Veta Afesulu called out to the person knocking on the door to come inside. Lucy Iese then went and turned on the light and she saw the respondent inside the house of Veta Afesulu. She also testified that after the respondent had left, Veta Afesulu gave her \$10 for herself and \$10 for her natural mother.

In considering the evidence of both Veta Afesulu and Lucy Iese, the Court must bear in mind that those two witnesses on their own evidence must be regarded as accomplices for having received an alleged bribe. However there is no rule against mutual corroboration by two witnesses each of whose evidence requires corroboration : *Election Petition re Aleipata-Itupa-i-Lalo Territorial Constituency [1970-1979] WSLR 247, 251*. I find that the evidence of Veta Afesulu and Lucy Iese corroborate each other in material particulars. There was also no evidence called for the respondent to rebut the evidence by Veta Afesulu and Lucy Iese as the respondent elected not to testify in these proceedings. The Court also considers the close imminence of the election to be particularly relevant. I find that the giving of \$100 by the respondent to Veta Afesulu in the early morning of polling day when it was only a matter of a few hours before the polling booths were opened constituted bribery. I therefore find the first allegation of bribery against the respondent to have been proved beyond reasonable doubt.

I turn to the second allegation of bribery against the respondent which is that the respondent on Thursday afternoon, 25 April 1996 gave \$100 to elector Faleaana Taimata of Satuimalufilufi for the purpose of inducing that elector to vote for the respondent. According to the evidence of Faleaana Taimata he holds the matai title Galu from the village of Satuimalufilufi. He says that at about 4.00pm on Thursday afternoon, 25 April 1996, the respondent with another person came to his home and asked him which candidate he had placed his faith in. He told the respondent that he would be voting for the petitioner and the respondent replied he would not force his vote. The respondent then put his hand in his pocket and tossed out a \$100 note to him. According to Faleaana Taimata, he

refused to accept the money but when the respondent insisted it was a gift he took the money and thanked the respondent.

Mate Gaia, the wife of Faleaana Taimata gave evidence that in late afternoon on 25 April 1996 the respondent's vehicle stopped in front of her house and she told her husband to go outside and see what the respondent wanted. When her husband returned into the house he placed a \$100 note in front of her and said it was a gift from the respondent.

Faleaana Taimata on his own evidence must be regarded as an accomplice. I find that the evidence of Mate Gisa sufficiently corroborates that of her husband Faleaana Taimata in material particulars. I also find that the circumstances in which the respondent gave the money to elector Faleaana Taimata was for the purpose of inducing that elector to vote for the respondent and therefore constituted bribery. The second allegation of bribery against the respondent is therefore proved beyond reasonable doubt.

As for the third allegation of bribery against the respondent which is that on Friday afternoon, 26 April 1996 he gave \$80 to elector Vine Valuniu of Fasitootai for the purpose of inducing that elector to vote for the respondent, I accept from the evidence that what happened took place on Friday morning rather than on Friday afternoon, 26 April 1996. The allegation is accordingly amended. Vine Valuniu gave evidence that about between 5.00am and 6.00am in the early morning of polling day the respondent and his committee member Afemaleta Silaue came to his home while it was still dark and called out from outside how we were. The respondent then also called out that a pick up vehicle would be sent to take

us to the booth to cast our votes, and he then tossed some money to Vine Valuniu and left. When Vine Valuniu took the money it was \$80 made up of eight \$10 notes.

Leta Valuniu, the wife of Vine Valuniu, also gave evidence which confirms that in the morning of polling day, the respondent and his committee member Afemaleta Silaue came to her house while it was still dark and called out the name of her husband from outside. She also testified that the money was given by the respondent to her husband and it was \$80. She also said that was the first and only day that the respondent had given them any money.

Treating Vine Valuniu as an accomplice, I find that his evidence is sufficiently corroborated in material particulars by the evidence of his wife Leta Valuniu. I accept their evidence. I find that the circumstances in which the respondent gave money to elector Vine Valuniu constituted bribery. The third allegation of bribery against the respondent is therefore proved beyond reasonable doubt.

As for the fourth allegation of bribery against the respondent which is that, on polling day he gave elector Sefulu Aukuso of Fasitootai \$20 for the purpose of rewarding that elector for having voted for the respondent, Sefulu Aukuso gave evidence that after he and his wife had cast their votes at the booth which was at Satapuala they came out of the booth and they were invited by the respondent to come to the party on Saturday, the day after polling day. However he told the respondent that they could not come as Saturday was their Sabbath day. So the respondent gave them \$20 and a vehicle to take them home. Lina

Aukuso, the wife of Sefulu Aukuso also testified that on polling day her husband came with \$20 and told her it was from the respondent.

After careful consideration I am not satisfied beyond reasonable doubt that the respondent corruptly gave \$20 to elector Sefulu Aukuso after he had cast his vote. The fourth allegation of bribery against the respondent is therefore dismissed.

I turn to the fifth allegation of bribery against the respondent which is that on Saturday, 13 April 1996, the respondent through his wife paid for the costs of holding a fundraising dance by the Fasitootai rugby club at the Satapuala Beach Resort together with the charge of \$400 for the band which played at the dance for the purpose of inducing members of the Fasitootai rugby club to vote for the respondent.

The evidence which was given by the electors Aana Poutoa and Iopu Suamili both of Fasitootai and the witness Papalosa Pele was that they are members of the Fasitootai rugby club which held a fundraising dance at the Satapuala Beach Resort owned by the respondent. During the dance the respondent announced that he would pay for the costs of the place and band for the dance. The cost of the band, according to Iopu Suamili, was \$400. Ve'a Paulo Molioo the band leader testified that the respondent's wife paid his band \$400 for playing at the Fasitootai rugby club's fundraising dance. Even though Aana Poutoa and Iopu Suamili on their own accounts must be regarded as accomplices, their respective testimonies mutually corroborate one another and there is also sufficient corroboration of their respective testimonies in the testimony of Papalosa Pele.

I also find as a fact that the money which was paid to the band was contributed by the respondent. I am satisfied that the actions of the respondent in announcing that he would pay for the place and band for the Fasitootai rugby club's fundraising dance so close to the election and then actually paying for the band constituted bribery. The fifth allegation of bribery against the respondent is accordingly proved beyond reasonable doubt at least in respect of the electors Aana Poutoa and Iopu Suamili.

As for the sixth allegation of bribery against the respondent which is that the respondent by his campaign committee member Afemaleta Silaue gave \$10 to elector Sefulu Aukuso of Fasitootai to induce that elector to vote for the respondent, I am not satisfied beyond reasonable doubt that the respondent was aware of or authorised the actions taken by Afemaleta Silaue. The sixth allegation of bribery against the respondent is therefore dismissed.

I turn now to the single allegation of treating against the respondent which is that on Thursday morning, 25 April 1996, the respondent gave elector Latai Tomasi and her husband two bottles of vodka, one bottle of whiskey and a carton of coca cola for the purpose of inducing them to vote for the respondent. Latai Tomasi testified that these spirits and drinks were given to her family at about 5.00am to 6.00am on Thursday morning, 25 April 1996 for the purpose of attracting some youths of Fasitootai in the evening for a party.

Latai Tomasi on her own evidence must be considered an accomplice. In considering her evidence, which was not corroborated by the testimony of any other witness, I bear in mind the warning that it can be dangerous to act on the

uncorroborated testimony of an accomplice. However there is nothing to prevent the Court from acting on such testimony if it is satisfied of the truth of the testimony and provided it bears in mind the warning I have just referred to. Bearing that warning in mind, I have decided to accept the testimony of elector Latai Tomasi. And I draw the inference that in the circumstances the spirits and drinks were intended not only to attract some youths of Fasitootai to a party but also to induce Latai Tomasi and her husband to vote for the respondent. As Latai Tomasi's husband is not an elector of the Aana Alofi No.3 territorial constituency, I find the giving of spirits and drinks by the respondent to constitute treating in respect of Latai Tomasi and not her husband. Accordingly the allegation of treating against the respondent is proved beyond reasonable doubt in respect of elector Latai Tomasi.

I turn now to the allegations of undue influence against the respondent. The first allegation of undue influence is that the respondent by his campaign committee member Toleafoa Vaitoelau of Faleatiu collected and withheld the certificate of identity or ID of elector Iliili Tala for the purpose of inducing that elector to vote for the respondent.

Toleafoa Vaitoelau gave evidence that she was a campaign committee member for the respondent in the last general election and the instruction issued by the respondent to her was to collect IDs from electors which were to be kept until election day when they were to be returned to the electors to enable them to vote; and after voting they were to be given back to the campaign committee again. Pursuant to that instruction Toleafoa Vaitoelau went and collected and withheld the ID of elector Iliili Tala of Fasitootai. The evidence given by

Naomi Chan Ben confirms that Toleafoa Vaitoelau obtained from her and withheld the ID of elector Iliili Tala. As Toleafoa Vaitoelau would appear to be an accomplice, I bear in mind the corroboration warning I have already stated in respect of the evidence of an accomplice. With that warning in mind I accept her testimony which is to a significant extent corroborated by the evidence of Naomi Chan Ben.

As Toleafoa Vaitoelau was acting pursuant to instructions given by the respondent to collect and withhold IDs from electors until polling day when they were to be given back to enable electors to vote, the actions taken by Toleafoa Vaitoelau must be attributed to the respondent and considered to be the actions of the respondent. I find those actions were for the purpose of inducing Iliili Tala to vote for the respondent and therefore constituted undue influence. Accordingly the first allegation of undue influence against the respondent is proved beyond reasonable doubt.

The second allegation of undue influence against the respondent is that the respondent by his campaign committee member Toleafoa Vaitoelau collected and withheld about 20 IDs from electors for the purpose of inducing those electors to vote for the respondent. Bearing in mind the corroboration warning I have already stated in respect of the evidence of an accomplice, I do accept the evidence of Toleafoa Vaitoelau in respect of the present allegation. She said that pursuant to instructions from the respondent to obtain and withhold IDs from electors until polling day she obtained and withheld about twenty IDs from electors including Sialeipata Faisaovale, Ueni Tovio, Samoa Faafouina, Lolesio Petelo, Paia Mauga, Isaia Mauga, Isaako Mauga and Iliili Tala. The actions taken

by Toleafoa Vaitoelau must of course be attributed to the respondent who issued the instructions upon which Toleafoa Vaitoelau acted. I find that Toleafoa Vaitoelau's actions were for the purpose of inducing the electors as named to vote for the respondent and therefore constituted undue influence. Accordingly the second allegation of undue influence against the respondent in respect of the electors (apart from Iliili Tala) named in Toleafoa Vaitoelau's evidence is proved beyond reasonable doubt.

As for the third and final allegation of undue influence against the respondent, which is that the respondent by his campaign committee member Fa Rimoni collected and withheld six IDs from electors Faamoe Paufai and Maimoa Faamoe of Faleatiu and their four children for the purpose of inducing those electors to vote for the respondent, I conclude from the evidence of Toleafoa Vaitoelau and of Faamoe Paufai and Maimoa Faamoe that the third allegation of undue influence against the respondent has also been proved beyond reasonable doubt.

Now section 112 of the Electoral Act 1963 provides :

"Where a candidate who has been elected at any election is proved at the trial of an election petition to have been guilty of any corrupt practice at the election, his election shall be void".

In view of the findings of bribery, treating and undue influence I have made against the respondent, I declare his election to be void in terms of section 112 of the Act. I make that declaration notwithstanding that the respondent has already resigned his seat in Parliament.

I turn now to the counter-allegations, which are all of bribery, made by the respondent against the petitioner and in respect of which the Court found there was a case to answer.

The first of these counter-allegations is that the petitioner on 8 January 1996 gave electors Toma Tuivasa a catechist trainee and his wife Fofoa Tuivasa \$30 for the purpose of inducing those electors to vote for the petitioner. The evidence of Toma Tuivasa was that he and his wife went to the office of the Registrar of Electors and Voters at the Legislative Department to have their IDs done. They went into the office of the petitioner who was then the Speaker of the Legislative Assembly to seek assistance with regard to the making of their IDs. Apparently they did not have their passports so the petitioner gave them his car to go home and obtain their passports.

When Toma Tuivasa and his wife returned, they went to the office of the Registrar of Electors and Voters to have their IDs done. After making their IDs they went back to the office of the petitioner and Toma Tuivasa said that the petitioner gave him and his wife \$30. His interpretation of the petitioner's actions was that the money was given for the purpose of inducing him and his wife to vote for the petitioner at the forthcoming general election. The evidence of Fofoa Tuivasa was that she was not present when the petitioner gave the money to her husband as she was called back to the office where their IDs had been done. She only learnt of the \$30 when her husband told her about it.

The petitioner denies that he gave \$30 for the purpose of inducing Toma Tuivasa and his wife Fofoa Tuivasa to vote for him at the election. He gave

evidence that he is related to Toma Tuivasa and he had on two previous occasions in 1995 gave money to Toma Tuivasa when he sought financial assistance from him. That part of the petitioner's evidence was confirmed by Toma Tuivasa himself in his evidence. The petitioner further testified that Toma Tuivasa and his wife came to his office for some money for bus fare and food. So he gave \$30. Part of that money was reimbursement of the \$12 which Toma Tuivasa and his wife had mistakenly paid for their IDs as they did not have to pay for new IDs and \$18 was for their bus fares and food.

After careful consideration of the evidence, I am not satisfied beyond reasonable doubt that the petitioner gave \$30 to Toma Tuivasa for the purpose of inducing him and his wife to vote for the petitioner at the election. Not only is Toma Tuivasa's evidence in conflict with that of his wife in a very material particular, but his conclusion that the money was given by the petitioner to induce him and his wife to vote for the petitioner at the election was his own personal interpretation of the surrounding circumstances. He also overlooked that in 1995 when he twice sought financial assistance from the petitioner who is related to him he was given such assistance on both occasions.

The first counter-allegation of bribery against the respondent is therefore dismissed.

I come now to the second counter-allegation of bribery against the petitioner which is that the petitioner through his agent Luteru Herota gave electors Maave Falealili and Falealili Taelega both of Satapuala \$90 in December 1995 for the purpose of inducing them to vote for the petitioner at the 1996

election.

* The evidence by Maave Falealili and Falealili Taelega was that they were brought in Herota Luteru's vehicle in the beginning of December 1995 and taken straight to the office of the Electric Power Corporation at the Ioane Viliamu Building where Herota Luteru paid the bill of \$70 for their electricity which had been disconnected for sometime. Maave in cross-examination later changed the date to 20 February 1996. They also testified that after their electricity bill was paid Herota Luteru gave them \$20 and told them to remember the petitioner in the election in the new year.

Herota Luteru in his evidence testified that about 29 January 1996, Maave Falealili and Falealili Taelega asked him for some money to pay for their electricity which had been disconnected. He was not able to help them at that time. But on 1 February 1996 Maave Falealili and Falealili Taelega again asked him for some money to pay for their electricity bill and that was when they came and paid the electricity bill. He also denies giving them \$20 and telling them to remember the petitioner in the election.

Herota Luteru was able to obtain from the Bank of Western Samoa the cheque which was used to pay the electricity bill for Maave Falealili and Falealili Taelega and that cheque is dated 1 February 1996 and made out to the Electric Power Corporation. Herota Luteru also testified that he was not a member of the petitioner's campaign committee for the last general election until about the last week of March which was confirmed by the evidence of at least one other witness called for the petitioner.

Looking at the present counter-allegation as it stands, there is no evidence to show that the petitioner authorised or instructed Herota Luteru to pay for the electricity bill of Maava Falealili and Falealili Taelega. Likewise, it is now clear that Herota Luteru was not an agent of the petitioner when he paid for Maave Falealili and Falealili Taelega's electricity bill or made the alleged payment of \$20. In other words there is no link between the second counter-allegation of bribery and the respondent. On that basis that counter-allegation is dismissed.

Apart from that I find the evidence of Maave Falealili and Falealili Taelega rather unsatisfactory. What they said that Herota Luteru was an agent of the petitioner when he paid for their electricity bill is not supported by any credible evidence. And secondly, if the payment of their electricity was made on 1 February 1996, then what they say that Herota Luteru told them to remember the petitioner in the election in the new year cannot be correct. I am therefore not able to conclude that what Herota Luteru did constituted bribery on his part given the defects in the evidence of Maave Falealili and Falealili Taelega. Likewise I am in a reasonable doubt whether Herota Luteru gave them \$20 as Maave Falealili claimed in her evidence.

Falealili Taelega in his evidence also testified that when he and Maave Falealili went to the office of the Legislative Department to have their IDs done, the petitioner's secretary gave them \$20 and the petitioner told them to bear in mind the "ekisi" meaning the vote. However Maave Falealili testified that it was Herota Luteru who gave her \$20. There is also no counter-allegation that the petitioner gave Falealili Taelega and Maave Falealili \$20. The second

counter-allegation of bribery refers to a sum of \$90 by Herota Luteru which suggests that the \$20 was given by Herota Luteru and not by the petitioner. I have referred to these defects in the evidence of Maave Falealili and Falealili Taelega and the present counter-allegation to show how unsatisfactory they are.

I come now to the third counter-allegation which is that the petitioner on 26 January 1996 gave electors Mose Mulifai and Punavai Fuioa both of Satapuala \$10 each for the purpose of inducing those electors to vote for the petitioner.

The evidence given by Mose Mulifai and Punavai Fuioa in their affidavits was that on 26 January 1996 Herota Luteru took them to the Legislative Department to have their IDs revalidated and Herota told them that after their IDs were done to go to the petitioner for fares. So after Mose Mulifai and Punavai Fuioa had their IDs done they went inside the petitioner's office as he was Speaker of the Legislative Assembly at the time and asked for fares. According to them, the petitioner gave them \$10 and said to remember the election.

In his oral testimony, Mose Mulifai confirmed his affidavit and stated that he had been questioned and re-questioned about the contents of his affidavit. In cross-examination he stated that when they went into the office of the petitioner he asked the petitioner for fares and the petitioner gave him \$10. As I understood this witness's evidence he did not retract what is said in his affidavit that the petitioner at the same time said to remember the election.

The witness Punavai Fuioa in his oral testimony also confirmed his affidavit and stated that his affidavit had been explained to him before he

signed it. He also testified that he and Mose Mulifai went inside the petitioner's office and Mose asked for fares which was given by the petitioner. He said that was all that happened but then he went further and said that Mose thanked the petitioner for the fares and the petitioner replied bear in mind the election.

The petitioner gave evidence and he confirmed giving Mose Mulifai and Punavai Fuioa \$20 for fares. However he denied that he persuaded those electors to vote for him or that he gave them the money to induce them to vote for him. In his view it was free at that time to give such a thing and as the father of the district he gave people of the district what they ask for without asking them to vote for him.

I have given very careful consideration to this part of the evidence. I think both Mose Mulifai and Punavai Fuioa must be regarded as accomplices because on their own evidence they accepted an alleged bribe. However there is no rule of law against mutual corroboration by two witnesses each of whose evidence requires corroboration. I also bear in mind the corroboration warning in respect of the evidence of an accomplice.

With those legal considerations and after giving careful consideration to the relevant evidence, I have decided to accept the evidence of Mose Mulifai and Punavai Fuioa. Accordingly I find the third counter-allegation against the petitioner to be proved beyond reasonable doubt.

I should say something briefly in this connection about the time factor in

relation to electoral corrupt and illegal practices. There is no defined time period during which you may or may not commit a corrupt practice such as bribery, treating or undue influence. You may commit an electoral corrupt practice at any time provided what you do constitutes in the eyes of the law a corrupt practice. As for illegal practices, the effect of the Electoral Amendment Act 1984 is that any giving of money, foodstuffs, or other valuable consideration by a candidate to an elector within the "election period" is an illegal practice unless such giving falls within the exception provided in section 99A(2) of the Act. That means any giving of money, foodstuffs, or other valuable consideration by a candidate to an elector within the election period is an illegal practice. It does not mean that a candidate is free to commit a corrupt practice such as bribery, treating, or undue influence outside of the "election period" which has been defined as the period commencing on the day after the Chief Electoral Officer gives public notice of polling day and ending at the close of the poll on polling day.

Coming now to the fourth counter-allegation which is that the petitioner through his agent Tuifaasisina Lefei gave elector Malaeulu Taeaina the sum of \$40 in mid April 1996 to induce that elector to vote for the petitioner, it is clear to the Court from the evidence that Tuifaasisina Lefei was not an agent of the petitioner. There is also no evidence that the petitioner authorised or knew of Tuifaasisina Lefei giving any money to Malaeulu Taeaina. The fourth counter-allegation is therefore dismissed.

I must add here that Malaeulu Taeaina on his own evidence must be treated as an accomplice for receiving an alleged bribe. There is no evidence to

corroborate his testimony. However his testimony as an accomplice is contradicted by the evidence of the witnesses Manu Fuatina and Telemaleke Manu who testified that Tuifaasisina Lefei is a permanent resident of Australia and the money that was given to Malaeulu Taaaina was the usual thing to do in Samoan custom when someone arrives from overseas and a matai pays a visit with a kava stick as Malaeulu did on this occasion.

In those circumstances and given that Malaeulu Taaaina is an accomplice whose evidence is not corroborated, I am not satisfied beyond reasonable doubt that what Tuifaasisina Lefei did amounted to bribery.

As to the fifth, sixth and seventh counter-allegations that the petitioner on 24 April 1996 through his agent Maua Taoete gave \$14 to elector Tuvaelua Leo, \$15 to elector Folasau Pau, \$10 to elector Lagi Pau, \$30 to Lagi Toolepialii and \$10 to elector Siatini Enisi for the purpose of inducing all those electors to vote for the petitioner, it is clear from the evidence of the petitioner and Maua Taoete that Maua Taoete was not an agent or a member of the petitioner's campaign committee. There was also no evidence from the respondent's witnesses that Maua Taoete was an agent of the petitioner. Likewise there is no evidence that the petitioner knew, authorised or consented to Maua Taoete giving money to the electors I have referred to. In other words there is no link between the petitioner and the counter-allegations that Maua Taoete gave out money to electors as alleged.

The fifth, sixth and seventh allegations against the respondent are therefore dismissed.

I am however satisfied from the evidence of the witnesses Tuvaelua Leo, Folasa Pau, Lagi Poama and Siatini Enisi that Maua Taoete gave out to them the monies as alleged for the purpose of inducing them to vote for the respondent. Even though those witnesses on their own evidence must be treated as accomplices, their respective testimonies corroborate one another in material particulars. Maua Taoete in his evidence admitted to the giving of monies as alleged but denied they were for the purpose of inducing the recipients to vote for the petitioner. I do not accept his evidence.

Accordingly I find that the monies which were given out by Maua Taoete to the electors mentioned in the aforesaid fifth, sixth and seventh counter-allegations constituted bribery. However, those findings do not affect the petitioner as there is no link between the petitioner and those monies given out by Maua Taoete.

In all then, I declare the election of the respondent void in terms of section 112 of the Electoral Act 1963 and will report my findings to the Honourable Mr Speaker of the Legislative Assembly.

I make no order as to costs.

T. M. Sapulu
.....
CHIEF JUSTICE