

IN THE HIGH COURT OF THE COOK ISLANDS

HELD AT RAROTONGA

(CIVIL DIVISION)

MISC: 104/99

IN THE MATTER of a by-election for the
Constituency of
Pukapuka/Nassau held on
the 29th September 1999

BETWEEN TIAKI WUATAI of
Pukapuka, Candidate
Applicant

AND HON INATIO
AKARURU of Pukapuka
Respondent

Mr RC Harrison and Mr M Mitchell for Applicant

Mrs T Browne and Mr B Gibson for Respondent

Miss J Maki for Crown Law

Date: 3 December 1999

DECISION OF GREIG J

The petition of Tiaki Wuatai and others lodged some little time ago was amended and has been further refined as the hearing began earlier this week. There is a cross petition which also raises a number of challenges in respect of this by-election held on 29 September 1999 in the Nassau/Pukapuka constituency.

Yesterday I heard the petitioners evidence and submissions. These in the end related only to some 10 electors and there were three different grounds in challenging some of those electors.

I have not heard the cross petition nor have I heard any counter argument or submissions in respect of the petition challenge and grounds of the by-election. What

has occurred is that the petitioner this morning sought to amend the petition by adding an entirely new challenge on the basis as has been drafted by Mr Harrison on behalf of the petitioners and I quote "that the votes of the applicants for registration on the Island of Nassau named on pages 1 and 2 of the "Remote Registration" – 'pro-forma' – forms are invalid there having been no compliance with sections 14,15,16 and 109 of the Electoral Act 1998." That application was not resisted by Mrs Browne or Miss Maki and so the application was granted.

I have now heard this part of the matter in a full hearing, both sides to it. I have been asked to make a decision on this particular aspect. It is suggested that it will be determinative of the petition and cross petition and indeed the result of the by-election.

The question relates to the registration of electors. The Act provides in short that application for registration be made in a statutory form. Registration in the Cook islands is compulsory. The form itself requires the applicant to answer a number of questions as to qualification and disqualification and other details as to residential address, period of living there, date of birth and so on. It contains a declaration which is in the following words, "I believe I am qualified to be registered as an elector and declare that to the best of my knowledge the information I have given above is correct." There is a space for signature, a place for witnessing and the "Capacity of Witness," which is limited, is also a matter to be acknowledged. As if that is not enough, the statute itself requires signature and witnessing in the sight and presence of the applicant. So it is quite clear to me that those particular requirements are of importance, are mandatory, and they are clearly considered to be fundamental to the proper registration of an elector.

S108 of the Act provides for the improvisation of forms. Sub-section (2) allows improvisation of forms where the forms prescribed or referred to in the Act are not available.

What happened in Pukapuka/Nassau before the general elections which was held on 16th June 1999 was that in the absence of the statutory forms for registration what was described as a "Remote Registration (pro-forma) form was prepared. That is quite unlike the application form in the statute. The provision as to qualification and disqualification is all contained in one column. It is headed "sec.a and b valid tick". In other columns provision is made for other material information that is required in the form itself. There is a place for signing and at the bottom a declaration not by the applicant but by the Registrar that he has been assured by the applicant that they are qualified to apply and they have declared that the information given is correct.

On the Island of Nassau, this pro-forma form was not available. The Deputy Registrar of electors appointed under S11(5) of the Act obtained information from the applicant for election. He transmitted that information by radio telephone to the Registrar of Voters in Pukapuka. That officer then filled out the pro-forma form for these applicants and accepted, it seems, the assurance of the Deputy Registrar that the information was correct. The form so prepared is not signed by any of the applicants at all. I am inclined to believe although, I do not have to decide this, that the application pro-forma is an adequate improvisation of the form. It is obviously preferable that the form should be available. If it is not available improvisation should mimic the form as closely as possible rather than be in a different form altogether. It is clear however that this pro-forma without signature cannot qualify and the improvised form cannot qualify as a valid application for registration. The result of that then is that the 40 members, in the two pages, of the Island of Nassau who applied and who were put on the roll were not qualified had not completed the appropriate registration form and should not therefore be allowed to vote.

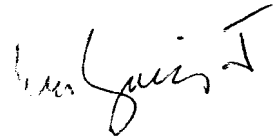
This means that their votes cannot be counted or allowed in this by-election. That is, not just 40 out of 440 of the members of the constituency but it seems virtually all of the islanders on the Island of Nassau, the whole of that part of the constituency was in fact disenfranchised and was unable to cast a valid vote.

Both in the general election and by-election the result can only be described as a slim majority. I think there can be no doubt in my mind that the result of this irregularity must be treated as being something which would affect and did materially affect the result of the poll.

I have not of course decided the other challenges of the election. There are a number of these and if these were to be upheld that would increase the number of invalid votes that were cast. In the result then, though unhappily, because of the expenses and the delays that are involved the only course open to me is to declare that the result of the by-election is void and I formally declare the by-election to be void.

Order under S104(2), the amount of the deposit of security paid in Court be returned to the petitioner and all other questions of costs are reserved for further submissions.

Further order that documents and papers produced to the Court by the Registrar of the High Court, the Chief Registrar of Electors and the Chief Electoral Officer be returned to the respective officers to be retained in accordance with the Act and subject to further order of the Court.



JUDGE