

SUPREME COURT OF NAURU
CIVIL SUIT NO. 1 OF 1978

VICTOR IDARABABWIN EOAE0

Plaintiff

v.

SECRETARY FOR JUSTICE and OTHERS-

Defendants

JUDGMENT:

This action concerns the electoral laws of Nauru and the general election held on 12th November, 1977. It seeks the following declarations -

(a) A declaration that the Returning Officer ought to have counted the votes and ascertained the result of the 1977 elections by the method described in the substantive Electoral Act 1965-1973 and not by the method described in the 27A Regulations as to the evaluation of the votes cast.

(b) A declaration that the Regulations 27A are null and void and ultra vires the Constitution of Nauru and/or the Electoral Act 1965-1973.

(c) Alternatively, a declaration that the Returning Officer was not entitled to count and evaluate the votes in accordance with the 27A Regulations.

(d) A declaration alternative to declarations (a), (b) and (c) that the laws of Nauru do not prescribe a method whereby a voter shall cast his votes at any election for members of Parliament.

(e) A declaration alternative to declarations (a), (b) and (c) that the election for the members of Parliament held on 12th November, 1977 is null and void and none of the 18 members declared as elected members thereof are entitled to be or remain members of Parliament of Nauru.

It also seeks consequential relief resulting from those declarations.

The Plaintiff was one of the thirteen unsuccessful candidates for election in the constituency of Ubenide. The

defendants are the Secretary for Justice, the Returning Officer and all the eighteen persons declared elected. All of those eighteen persons notified the Court in writing that they did not wish to enter an appearance or to take any part in the proceedings. They did this before the time limited for entering appearance had expired, in order that the action might be heard at the same time as an election petition by the plaintiff which raised many of the same issues. In the event the parties who took an active part in these proceedings were the plaintiff and the first and second defendants, while the parties who took an active part in the hearing of the petition were the plaintiff and the second defendant. The first and second defendants are represented by the same counsel. At request of counsel, this Court heard the evidence and counsel's addresses in both proceedings at the same time. A decision has now been given in respect of the petition; it decides most of the issues which require to be determined in this case. In respect of those issues, therefore, this judgment contains only a brief statement of the decisions and not the reasons for them. Although those issues were decided on the hearing of an election petition and section 37 of the Electoral Act 1965-1973 requires this Court in such proceedings to be guided by conscience and the substantial merits of the case without regard to legal forms and technicalities and without being bound by any rules of evidence, none of them was in fact decided upon the basis of any evidence which could not properly be taken into account for the purpose of deciding them in this action, nor was it necessary to disregard any "legal forms" or "technicalities".

The issues raised by the pleadings are:-

- (1) whether the laws of Nauru effectively prescribe the manner in which members of Parliament are to be elected;

(2) whether there is a lacuna in the laws of Nauru in respect of that matter;

(3) whether the Electoral (Electoral System) Regulations published in Gazette No. 5 of 1971 by Gazette Notice No. 23 of 1971 are ultra vires the Electoral Act 1965-1973;

(4) whether the value of votes cast in any election of members of Parliament should be ascertained in accordance with the Electoral Act 1965-1973;

(5) whether the Electoral Act 1965-1973 devalues the vote of a Nauruan citizen and/or voter and deprives him of the return of the number of members for each constituency as prescribed by Article 28 of the Constitution;

(6) whether the method of recording votes used by the Returning Officer for the general election held on 12th November, 1977, was correct;

(7) whether the results of that general election were ascertained by the method prescribed by the Electoral (Electoral System) Regulations and, if so, whether that was lawful;

(8) whether the declaration of the results of that election published by the Returning Officer on 14th November, 1977, was correct; and

(9) whether this Court has jurisdiction to declare the general election invalid in this action, which is commenced otherwise than under and in accordance with sections 29 and 30 of the Electoral Act 1965-1973.

I shall first deal shortly with issues nos. (1) to (8). In accordance with the decision of similar issues and matters relating to them in the election petition proceedings

and for the reasons stated fully in the decision in respect of that petition, I decide them as follows -

(1) Yes. Part IV and section 25 of the Electoral Act 1965-1973 do so in respect of two-member constituencies; they may do so in respect of the one four-member constituency, Ubenide. If they do not, the common law empowers the Returning Officer to adopt a suitable method.

(2) No, for the reasons given in (1).

(3) No. They are intra vires the powers conferred on the Cabinet by section 27A of the Act.

(4) The value of votes cast should be ascertained in accordance with the provisions of the Electoral (Electoral System) Regulations, made under section 27A of the Act, which override~~s~~ the provisions of section 27 of the Act.

(5) No, because the Constituency does not require that every elector should have only one vote. It does not preclude a preferential voting system.

(6) Yes.

(7) Yes, in respect of both matters.

(8) Yes.

In view of the decisions reached in respect of decisions nos. (1) to (8) it is not necessary to decide issue no. (9).

Accordingly the plaintiff is not entitled to any of the declarations he seeks and his claim is dismissed.

Mr. Tadgell has informed the Court that the first and second defendants do not seek any order for costs against the plaintiff. The plaintiff has requested this Court to

order that his costs be paid by the Republic because the matters raised were of great public importance. This Court has no power to make any such orders. Accordingly it is ordered that each party bear his own costs.

4th March, 1978.

Chief Justice