



**IN THE SUPREME COURT OF NAURU
AT YAREN
CIVIL JURISDICTION**

Constitutional Redress No. 01 of 2025

BETWEEN : VINSON FRANCO DETENAMO, of Buada District, Nauru.

APPLICANT

AND : ELECTORAL COMMISSION

RESPONDENT

BEFORE: Keteca J

DATE OF HEARING: 09th October 2025

DATE OF JUDGMENT: 10th October 2025

CITATION: Detenamo v Electoral Commission

KEYWORDS: Articles 29, 30, 31 & 41, Constitution; Sections 57, 58 & 135A Electoral Act 2016.

APPEARANCES:

COUNSEL for the

Applicant: Vinci Clodumar

Respondent: Bhavna Narayan

RULING

INTRODUCTION

1. By an Originating Summons supported by his affidavit, the Applicant applies for constitutional redress under Sections 28 & 29 of the Supreme Court Act 2018. The redress sought relates to the interpretation of Section 135A of the Electoral Act 2016 (**the Act**) in light of Articles 30 & 36 of the Constitution.

RELIEF SOUGHT

2. The Applicant seeks the following orders of the Court:
 - i. 'A declaration that Section 135A of the Electoral Act 2016 is ultra vires, beyond the powers of Parliament and without effect;
 - ii. A declaration that the Applicant is qualified and entitled to be a member of Parliament if so elected by the electors of the constituency of Aiwo; and
 - iii. If the Court affirms paragraph (i) above, the Applicant seeks a declaration that the election for members of Parliament for the Constituency of Aiwo is null and void.' (I note that no members of Parliament have been elected yet)
3. The Applicant seeks 2 consequential orders:
 - i. The Electoral Commission must accept the nomination of the Applicant as a candidate for the upcoming General Elections on 11th October 2025 and to do so whether or not Sections 135A of the Electoral Act 2016 is valid;
 - ii. The letter and determination of the Electoral Commission dated 01st September 2025 be set aside; and
 - iii. Costs.

BRIEF FACTS

4. The Applicant attempted to file a Declaration of Intent to contest the upcoming general election on 24th August 2025.
5. By a letter dated 01st September 2025, the Respondent informed the Applicant that his application is declined as under Section 135A of the Act 2016, it should have been lodged 'no later than 27th September 2024. In that letter, the Respondent reminded the Applicant that he 'cannot be nominated for election.' In the same letter, the Respondent reminded the Applicant that under Section 135A (5) of the Act, were he to be nominated as a candidate, he would be committing an offence and liable upon conviction to a fine not exceeding \$5000 or imprisonment for a term not exceeding 2 years or both.
6. The nomination for the Applicant was filed on 01st October 25. According to paragraph [12] of the Respondent's affidavit, this nomination was within the prescribed time for submitting nominations.
7. The Respondent declined the Applicant's nomination as it did not comply with Section 57 (3) of the Act. The non-compliance relates to Section 57(3) (d) in that it did not have a 'signed code of conduct' nor did it have evidence 'of the payment of the nomination fee of \$500.
8. The Applicant came to know of the Respondent's decision not to accept his nomination when his name was not listed in the 'Order of Candidates On the Ballot Paper' for Aiwo which was published in G.N.No 1231/2025 dated 04th October 2025.
9. The first sitting of the 24th Parliament of Nauru was on 28th September 2022. Under Article 41(7) of the Constitution the full term for this Parliament fell on 27th September 2025.

10. Parliament was dissolved a day earlier, on 26th September 2025. The 24th Parliament did not continue ‘for a period of 3 years’ to its ‘**full term.**’

APPLICANTS SUBMISSIONS

ISSUE 1- Section 135A Electoral Act

11. The first contention by the Applicant is that Section 135A the Act is ultra vires the Constitution. The Section provides:

‘135A Declaration of intention to contest a general election

- (1) A person who intends to contest in a general election shall make a declaration of such intent in the prescribed form, by no later than 12 months, before the dissolution of the **full term** of Parliament under Article 41(7) of the Constitution.
- (2) The written declaration of intent shall be delivered to the Electoral Commission.
- (3) The Electoral Commission shall publish in the Gazette a notice for the delivery of the written declaration of intent at least 13 months before the dissolution of the **full term** of Parliament under Article 41(7) of the Constitution.
- (4) The Electoral Commission shall publish in the Gazette a list of persons who have delivered a written declaration of intent under subsection (3) within 14 days after the close of the date of the delivery of the written declaration.
- (5) A person who fails to make a declaration of intent under subsection (1) and is nominated as a candidate under this Act, commits an offence and is liable upon conviction to a fine not exceeding \$5000 or imprisonment for a term not exceeding 2 years or both.
- (6) For avoidance of doubt, this provision **does not apply** to a by election, supplementary election or a **general election** which is held **earlier than the dissolution of the full term** of Parliament under Article 41(7)

12. Counsel submits that the only qualification to be elected a member of parliament is provided for under Article 29 of the Constitution in that the person:

- i. Is a Nauruan citizen
- ii. Has attained twenty years of age; and
- iii. Is not disqualified under Article 31 of the Constitution.

13. Counsel refers to **Constituency of Ubenide** (1971) NRSC 7; [1969-1982] NLR Part A 107. The question before the court in that case ‘is whether the provisions of Section 8 (2) of the Electoral Act 1965-1970, that excluded persons of unsound mind or who have been convicted and under a sentence for an offence punishable by imprisonment for one year or more from being entered on the electoral roll, was inconsistent with Article 29 Of the Constitution. In his judgment, Thompson CJ said:

*‘ Having given most careful consideration to all matters urged upon this Court by Mr MacSporran and being mindful that generally the Court should endeavour to uphold as valid laws which are not clearly ultra vires the Constitution, particularly where they have been enacted, or reviewed, by Parliament since Independence, I have nevertheless come to the conclusion that the effect of Article 29 is to **enfranchise** generally Nauruan citizens of the age of twenty years and over and that any law purporting to **disenfranchise any of them is void**, while the Constitution remains unaltered. ’*

14. Counsel argues that Section 135A of the Act 'disenfranchises Nauruans' for failure to comply with them. He adds that Section 135A does not provide for 'a manner' or a procedural matter' for elections.
15. Counsel submits that the 'disqualifications for membership of Parliament' under Article 31 of the Constitution do not include 'a failure to nominate' for the election at least twelve months before the election.' (I think that Counsel is referring to a failure to make a 'declaration of intent to contest')
16. Counsel concludes that the declaration of intent provision under Section 135A of the Act having the effect of 'disenfranchising' Nauruan citizens and not being a 'disqualifying factor 'under Article 31 of the Constitution, this makes the whole provision inconsistent with Articles 29, 30 and 31 of the Constitution. As a consequence, Counsel submits, Section 135A of the Act is ultra vires the Constitution.

RESPONDENTS SUBMISSIONS TO ISSUE 1- Section 135A OF THE ACT

17. The submissions by the Respondents here are two pronged. Firstly, Counsel asks whether the Applicant was required to comply with Section 135A of the Act at all. Counsel submits- *'As stated above, the Parliament was not dissolved under Article 41(7) of the Constitution. Therefore, it follows that Section 135A (1) did not apply to the Applicant to make a nomination under Section 57 of the Electoral Act 2016. This is expressly provided in Section 135A (6) which states that Section 135A A 'does not apply to a General Election which is held earlier than the dissolution of the full term of Parliament under Article 41(7) of the Constitution.'*
18. At the hearing, I raised a question on Section 135A (6) of the Act with Counsel for the Applicant. He submitted that the provision only applies if 'a **general election** is held earlier than the **date for the dissolution of the full term** of Parliament. He added, that it was not the case here as the general election will be held on 11th October 2025. This is a general election date which is after and not earlier than the date for the full term of Parliament.
19. I posed the same question to the Solicitor General. She referred to the impossibility of having an election before the dissolution of parliament. (that is obvious) Counsel contends that since the 24th Parliament was dissolved a day before it's 'full term', then Section 135A (6) of the Act applies.
20. As such, Counsel further contends that the Applicant did not have to file a 'declaration of intention to contest a general election 'under Section 135A (1). At paragraph [11] of her submissions- *'In other words, even if this Court intends to exercise its jurisdiction, it would serve no purpose, because the application for **all** the candidates for the 2025 General Election falls under Section 135A (6).'*
21. The Solicitor General concludes that this makes the consideration of Section 135A being ultra vires the Constitution, **moot**.

22. My reading of Section 135A (6) of the Act is different. It states:
- It does **not** apply
 - To a **general election**
 - Held **earlier than**
 - The **dissolution**
 - Of the **full term of Parliament**
 - Under Article 41(7)
23. This means that if a general election was to be held before the **date of the full term** of Parliament, then Section 135A(6) applies. It follows that persons intending to contest a general election which will be held before a Parliament is dissolved when it reaches its **full term** under Article 41(7), do not need to file a ‘declaration of intent to contest’ under Section 135A (1) of the Act.
24. In this case, Parliament was dissolved on 26th September 2025. According to the Solicitor General, the date for the full term for the 24th Parliament was 27th September 25. Since the general elections will be held on 11th October 2025, this is **after** the date for the ‘full term’ of the 24th Parliament. This election date, 11th October 2025 is not ‘earlier than the dissolution of the **full term** of Parliament, which fell on 27th September 2025. I agree with Mr Clodumar that Section 135A (6) of the Act does not apply here. The issue is thus, **not moot**.
25. Since I have held that Section 135A(6) of the Act does not apply in this case and the question is not moot, is the whole Section 135A of the Act ultra vires the Constitution?
26. The basis for the Applicants contention is in paragraph [16] above. Do the application of the provisions within Section 135A of the Act amount to disenfranchising ‘Nauru citizens twenty years and over’ and thus inconsistent with Article 29 of the Constitution?
27. The second prong (alternative submissions) of the Respondents submissions are relevant here. The alternative submissions also explain the rationale for the enactment of Section 135A of the Act. The Solicitor General submits as follows:
- Article 29 provides- *‘Members of Parliament shall be elected in such manner as is prescribed by law, by Nauruan citizens who have attained the age of twenty years.’*
 - Section 135A of the Act is a procedural law made pursuant to Article 29 of the Constitution. Those persons who qualify to contest the elections under Article 30 are required to comply with the prescribed laws enacted under Article 29. *‘It does not take away any rights of a voter or a person who intends to contest the elections.’*
 - Firstly, the ‘declaration of intent’ gives voters a clear choice for candidates.
 - Secondly, it allows the candidates to tell the public of their intent and to get the support of the people and other candidates.

- It's not a secretive process. The Electoral Commission is required to publish a notice *'requiring those intending to contest the election to submit a Declaration of Intent.'*
- A person is free to withdraw such intent or it lapses if the person is not nominated as a candidate.
- It allows voters to make informed decisions 'on who he or she wishes to vote for.'
- The case- *Re the Constitution of Nauru [1971] NRSC 7 [1969- 1982] NLR (A)5*, per Chief Justice Thompson- *' Mr MacSporran has submitted that the provisions of subsection (2) of Section 8 relating to the disqualification of persons under sentence are valid because Article 29 permits the manner of election of members of Parliament to be prescribed by law. He has contended that the expression 'manner' of election embraces not only the mechanics of election but also the entitlement to participate in an election. With respect, I consider that to give such a broad effect to the word 'manner' would be to strain its meaning too far. The manner in which something is done is the way, or mode, of its being done. '*
- Section 135A deals with the 'way or the mode of the election to be done.'
- 'Seventhly, the provisions of Section 135A does not prohibit any person from making a nomination for Election if he or she has failed to make a Declaration of Intent.

28. Considering the contentions from both Counsels I note that the present case can be distinguished from *Re the Constitution of Nauru [1971] NRSC 7*. In that case, Section 8(2) of the Electoral Act 1965-1970 (which was subsequently repealed by the Electoral (Amendment) Act 1973) disentitled persons of unsound mind and certain convicted persons from having their names entered in the roll of voters. Chief Justice Thompson held- *"I have nevertheless come to the conclusion that the effect of Article 29 is to enfranchise generally citizens of twenty years and over.."*

That Article 29 has remained in the Constitution. To 'enfranchise' is to 'empower', 'to give the right to vote to.' The court concluded that to disentitle two classes of persons from having the right to vote were inconsistent with Article 29. In contrast, I find that Section 135A of the Act, as explained by the Minister when it was introduced in Parliament, allows voters to make informed decisions on who he or she intends to vote for. It 'gives the opportunity to a voter to transfer to a district where he or she would like to support a candidate. I further find that Section 135A of the Act does not disentitle persons from having their names entered in the roll of voters. The provisions do not disentitle persons from standing for elections. Section 135A relates to the 'mechanics of election, the manner or mode of it being done. I agree with the Solicitor General that Section 135A of the Act 'does not take away any rights of a voter or a person who intends to contest the elections.'

29. I hold that Section 135A of the Act is not a law 'purporting to disenfranchise' Nauruans. As such, I further hold that Section 135A of the Act and is not inconsistent with Article 29 of the Constitution.

ISSUE 2- REJECTION OF THE APPLICANT'S NOMINATION AS A CANDIDATE

30. The Applicant contends that 'the refusal by the Respondent to accept the Applicant's nomination is inconsistent with Article 36 of the Constitution. Counsel submits that in refusing to enter the name of the Applicant as a candidate for Aiwo, the Electoral Commission was usurping the 'constitutional authority of the Supreme Court.'
31. Counsel adds that based on the decision of Connell CJ in *Constitutional Reference No 1 of 2004, re Dual Nationality*, [2004] NRSC 3, the Electoral Commission is to refer matters pertaining to the rejection of a candidate's nomination to the Supreme Court for a determination. Counsel further submits that since the Electoral Commission rejected the Applicant's nomination without first referring the matter to the Supreme Court, such a decision by the Respondent is inconsistent with Article 36 of the Constitution and therefore void.
32. In the above constitutional reference, Question B referred to- *'The effects of Articles 30, 31, 36, and 75 of the Constitution of Nauru on membership of Parliament.* In giving his opinion, Connell CJ said- *'It is not necessary to answer this in detail But the Court draws attention to the fact that where a question arises concerning the right of a member to remain a member of Parliament then the procedure for determining this issue is by referral under Article 36 to the Supreme Court.'*
33. Article 36 of the Constitution reads:
'Any question that arises concerning the right of a person to be of or to remain a member of Parliament shall be referred to and determined by the Supreme Court.'
34. I note that the constitutional reference mentioned in paragraphs [31-32] above dealt with a sitting member of Parliament who was a Nauruan citizen and also possessed the citizenship of another country. To interpret Article 36 of the Constitution I take a similar approach of CJ Thompson in *Re the Constitution of Nauru [1971] NRSC 7*. He said-
'In order to interpret Article 29, it is necessary to examine its context. It is in Part IV of the Constitution, which relates to the Legislature. Other Articles in that part establish Parliament, give it powers. Subject to the Constitution, to make laws, provide for its membership, its officers, its powers, privileges and procedure and for other matters relating to it.'

35. The same applies here, for Article 36. It comes after Article 32- Vacation of seats of Parliament, Article 33- appointment of the Clerk of Parliament, Article 34- Speaker of Parliament, Article 35- Deputy Speaker of Parliament. In statutory interpretation, the first approach is to look at the plain meanings of the provisions. Are the words in the context of the provision, unambiguous? Article 36 of the Constitution, reads:

- 'Any question that arises
- Concerning the right of a person
- To be of or
- To remain a member of Parliament
- Shall be referred to
- And determined
- By the supreme Court.'

What do the words '**right to be of a member**' mean? Does it include persons seeking to become candidates in a general election. In **Pepper (Inspector of Taxes) v Hart** [1993] AC 593, Lord Browne-Wilkinson referred to "the purposive approach to construction now adopted by the courts in order to give effect to the true intentions of the legislature". Lord Griffiths stated:

"The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted."

36. What is the true intention of Parliament here? I note that the term 'member' is defined under the Act as- 'means an elected member of Parliament.' Section 58(2) of the Act provides that the Electoral Commission may determine that a '*candidate is not qualified to be a Member of Parliament under Articles 30 and 31 of the Constitution.*' Therefore, if the Electoral Commission determines that a candidate does not qualify to be a member under Articles 30 and 31 of the Constitution, his or her nomination can be withdrawn before the election. I therefore hold that the intention of Parliament 'on right to be of a member' under Article 36 of the Constitution, read with Section 58(2) of the Electoral Act (dealing with candidates) is to be interpreted to mean- **persons already elected in a general election.** So once a person is elected and becomes a member of Parliament, then any questions that arises regarding his membership of Parliament 'shall be referred to and determined by the Supreme Court.'

37. I find that the Electoral Commission does not have to refer matters relating to the rejection of the nomination of a candidate to the Supreme Court for its determination. I further find that the Applicant did not comply with the requirements stipulated under Section 57(3) of the Act. The rejection of the Applicant's nomination by the Electoral Commission is not inconsistent with Article 36 of the Constitution.

38. In summary, I hold as follows:

- i. Section 135A(6) of the Act does not apply here as the general election is not being held earlier than 27th September 2025, the date Parliament would have been dissolved having reached its full term, under Article 41(7) of the Constitution.
- ii. Section 135A of the Act is a prescribed law under Article 29 of the Constitution. The provisions of Section 135A do not 'disenfranchise Nauruans' or disentitle them from having their names on the voters roll or being nominated as a candidate for the general elections. It is not inconsistent with Articles 29,30, 31 and 36 of the Constitution.
- iii. Article 36 of the Constitution refers to persons already elected in a general election.
- iv. The Electoral Commission in rejecting the Applicant's nomination under Section 57(3) of the Act is not inconsistent with Articles 30,31 and 36 of the Constitution.

ORDERS

39. I make the following orders:

- i. The application for a declaration that Section 135A of the Act is ultra vires the Constitution is dismissed.
- ii. The application for a declaration that the Applicant be nominated to contest the upcoming elections, is dismissed.
- iii. The application for a declaration that the election of members of Parliament for the Constituency of Aiwo is void, is otiose, and is dismissed.
- iv. The application for the consequential order that the Respondent accept the Applicant as a candidate for the upcoming general election is dismissed.
- v. Costs of \$500.

DATED this 10th Day of October 2025


Kiniviliame T. Keteca

Judge

