

ELECTION PETITION re VAISIGANO NO. 1
TERRITORIAL CONSTITUENCY

SUPREME COURT. 1967. 11, 12, 13, May; 11, August. SPRING C.J.

Petition to avoid election - indiscriminate creation of matai titles to obtain votes at Election - allegations of illegal practice - standard of proof - functions of Registrar of Electors and Land and Titles Court - Electoral Act 1963.

A charge which involves the disqualification of an elected Member of Parliament should be proved beyond doubt before the election of a successful candidate can be set aside.

Welland Election, Buchner v. Currie (1875) Hodgins Election Reports 187 and Cameron v. Beaton (1915) 48 Nova Scotia Reports 353 followed.

In re Wairau Election Petition (1913) 31 N.Z.L.R. 321 referred to.

Though invested with powers and duties as regards the enrolment of matais on the Electoral Roll, the Registrar of Electors has no power to regulate the enrolment of matais on the Matai Register, this latter being peculiarly within the province of the Registrar of the Land and Titles Court. Accordingly it would not be competent for the Registrar of Electors, nor the Supreme Court, to question the decision of the Land and Titles Court, or the Registrar of that latter Court, on a matter relating to a matai title; and unless the Registrar of Electors believes or has cause to believe that a person registered as a matai on the Electoral Roll is under 21 years or is disqualified for some other reason, he is entitled to enter that person's name on his Electoral Roll.

Petition dismissed.

PETITION to avoid election of Member of Parliament.

Petitioner, in person.
Respondent, in person.
Clarke, for Registrar of Electors.

Cur. adv. vult.

SPRING C.J.: The Territorial Constituency of Vaisigano No. I was contested by the three candidates at the General Election for Members of Parliament of Western Samoa held on the 25th February 1967. The Chief Returning Officer declared the final results for this Constituency as follows:

Tufuga Efi	561 votes
Tufuga Samuelu	34 "
Va'ai Kolone	700 "

Va'ai Kolone was accordingly declared duly elected. An Election Petition was duly filed and presented by the above-named petitioner Tufuga Efi seeking to avoid the election of the said Va'ai Kolone upon the grounds set out in the said Election Petition which reads (inter alia) as follows:

"1. Your Petitioner says that the Registrar allowed an unlawful election for these reasons:

Among others who were under-age -

<u>No. on Elec-</u> <u>toral Roll</u>	<u>Title</u>	<u>Christian Names</u>	<u>Village</u>	<u>Sex</u>
436	Leatiatigie	Vaisala	Vaisala	Female

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<u>No. on Electoral Roll</u>	<u>Title</u>	<u>Christian Names</u>	<u>Village</u>	<u>Sex</u>
452	Leololo	Aigaga	Vaisala	Female
702	Masalomia	Moli	"	Male
1060	Tauauvao	Sueni	"	"
88	Alo	Saofai	"	"
262	Fagaititi	Fa'asegia	"	"
612	Mauava	Sueni	Auala	"
1363	Vaipapa	Ta'ape	"	Female
331	Fili	Fiva	"	"
547	Liufau	Tapale	"	Male
982	Siufamua	Popo	"	"
674	Malouatasi	Lamepa	"	Female
1074	Tauolo	Alapati	"	Male
1374	Tuitaili	Lo'i	"	"

- "2. That Utufa'asili Popili and one hundred and sixty others' titles were objected to by certain petitioners. The records are with the Land and Titles Court. Most of these matais have been abolished by common agreement of the parties concerned. The objections were lodged by the 20th January, 1967, long before the elections.
- "3. That most of these titles were created against every principle of faa-Samoa and even the Land and Titles Protection Ordinance.
The Registrar or his representatives condoned this irregularity insofar as most of these matais were mass-produced within the Government Compound in Tuasivi - well within the view of the Registrar or his representatives. This led to forgery on a grand scale, ^{here} referring to the signature of the Pulemu'u forged principally by Uili Va'ai and Oloapu Iose and to impersonations, i.e., taking of the oath by one on behalf of the other, among practitioners of impersonations were Faifeau Tapu otherwise known in the Electoral Roll as Oloapu Faifeau and Tutomu Toomata Metu. That the Registrar's condonation extended even to acceptance of registration papers - unsigned and obviously forged. Evidence that most of these electors do not hold matai titles: Among others who remain in the Aumaga and have never left it regardless of so-called conferment of titles: 205 Fa'ae'e Telegese, 1119 Tagaloa Elama, 1111 Tafa Isopo, 316 Fotuula Ualesi, 322 Fetafune Tufa, 501 Legatasia Launiu (N.B. There are several others). Among others who remain in the Aoaluma - 787 Muoleaute Pupe, 785 Muaau Tamaali'i, 1063 Tauama'ai Su'e, 66 Alafua Kale, 346 Fofoi'ese Ese'ese, 654 Malaeti'a Penina. Among others who remain in the "Faletua and Tausi" besides several others - 285 Falefagafua Elisapeta, 473 Leololo Tumama, 627 Maugasau Ferila, 867 Pese Maluvale, 214 Fa'amaoni Tualaina, 1244 Tuisafua Seilosa, 908 Sauoleola Fonofili, 1384 Vaivaiioletagalo Maoa. Some of the Untitled Men's Wives who still retain their status as such in village life: 412 Lagomautumua Hana, 383 Laaumu Pepe, 641 Malaefono Lamepa, 1104 Tausavali Aniva, 1136 Tagialepumate Tulagalua, 443 Leianoa Sele.
THAT the Auala Chiefs in Council have recognised the farce and on the 10th March, 1967 abolished most of their newly created matais.
- "4. THAT the farce becomes even more obvious when one considers that according to the last Census 25th November, 1966 the total population of Vaisala comes to 491 and the Vaisala matais on the Electoral Roll totals 611. And becomes even more so when it has been disclosed by the same Census that the total adult (21 and over) population of Vaisala comes to 167.

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The main reason for this is that people who have either no interest in the Constituency of Vaisigano No. 1 or no connection whatsoever were given matai titles - Sataua, Samata, Neiafu, Papa, Falealupo, Fogasavaii and Sato'alepai contributed substantially to the Vaisala Electoral Roll. Among others who have no connection whatsoever to Vaisala 668 Maliegafau Ese (Fagamalo), 1103 Tausalaomalo Koke (Samata), 105 Alamalo Solofa (Sataua), 1387 Vaivaiioletagaloa Toefiliga (Papa), 43 Afoa Paulo (Falealupo), 20 Afoa Amosa (Neiafu), 115 Atumulau Faatonu (Sato'alepai) 1261 Tuitulua Mu (Fogasavaii)."

The said petition was duly tried by this Honourable Court at Falealupo on the 11th, 12th and 13th days of May 1967. Written submissions were duly filed by the Petitioner and the Respondents and the last of these submissions was received on the 8th June 1967. Section 112 of the Electoral Act 1963 provides -

"112. Avoidance of election of candidate guilty of corrupt practice -

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.

Also in Section 113 -

"113. Avoidance of election for general corruption -

- (1) Where it is reported by the Supreme Court on the trial of an election petition that corrupt or illegal practices committed in relation to the election for the purpose of promoting or procuring the election of any candidate thereat have so extensively prevailed that they may be reasonably supposed to have affected the result, his election, if he has been elected, shall be void.
- (2) Except under this section, an election shall not be liable to be avoided by reason of the general prevalence of corrupt or illegal practices."

The Petitioner asks that the election be set aside or voided upon the grounds (inter alia) that the Registrar of Electors permitted an unlawful election; and further that there was such a prevalence of illegal practices that the election should be voided under Section 113 of the Electoral Act 1963 (supra).

Under the provisions of the Electoral Act 1963 an "Elector" is defined as follows - "'Elector' in relation to any territorial constituency means a person registered, or qualified to be registered, as an elector of that territorial constituency."

The qualification of an elector is set out in Section 16(1) of the said Act which reads as follows:

"16. Qualifications of electors -

- (1) Subject to the provisions of the Constitution and of this Act every person shall be qualified to be registered as an elector of a constituency if -

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- (a) He is the holder of a Matai Title; and
- (b) His name appears for the time being on the Register of Matais established and kept pursuant to the Land and Titles Protection Ordinance 1934; and
- (c) He is not disqualified as a candidate for election by virtue of any of the provisions of section 5 of this Act;
- (d) He is over the age of twenty-one (21) years."

In short, therefore, it is clear that an elector must be the holder of a matai title and his name must appear on the Register of Matais and he must be over the age of 21 years.

A "Matai Title" is defined in the said Act, Section 2, as "'Matai Title' means a title which is entered in the Register of Matais established and kept pursuant to the Land and Titles Protection Ordinance 1934, other than a title held as a complimentary honour only."

It appears to the Court that in essence the allegations of the Petitioner are as follows:

- "(1) He alleges against the First Respondent that he created or permitted to be created numerous matais in the said Constituency (all of whom would in the Petitioner's submissions be favourable to the First Respondent) and was thereby guilty of an illegal practice; and
- "(2) He alleges that the Second Respondent permitted an unlawful election by enrolling the newly created matais on the Electoral Roll when they or some of them would not have been so enrolled as they were under age."

It is the function of the Registrar of Electors (inter alia) to compile an Electoral Roll and to keep same as complete and accurate as possible. The said Act provides in Section 18(1) -

"18. Procedure -

- (1) In compiling an Electoral Roll for a constituency, the Registrar shall be entitled to rely primarily on the last previous Electoral Roll for that constituency and on the Register of Matais but he shall not include any person who holds a complimentary honour only."

It is claimed by the petitioner that the word "primarily" in this section should be interpreted as meaning "in the first place"; and the petitioner claimed further that the Registrar's duties under this section would include the taking of such steps as were required to remove the names of persons from the Electoral Roll (notwithstanding that they are enrolled on the Register of Matais), if he, the Registrar, was aware that such persons were under 21 years of age, had lost their citizenship or be otherwise unqualified to be registered as electors.

Mr Clarke for the Second Respondent, The Registrar of Electors, claims that the word "primarily" in section 18(1) means that the Registrar is entitled to rely only on the

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previous roll and the Matai Register. In my view the interpretation claimed by the Petitioner is the correct one. This conclusion is supported in my view by the provisions of Section 18(2)(e) which reads -

"(e) The Registrar may either consult any matai or pulenu'u of any constituency, or convene and attend a meeting in any constituency of the matais and pulenu'u belonging thereto, for the purpose of checking and correcting (if necessary) the Electoral Roll for that constituency."

It must be remembered that the qualifications for enrolment on the Matai Register and on the Electoral Roll are different.

The previous Electoral Roll and the Register of Matais are the prime references to which the Registrar of Electors should have recourse in compiling his roll of Electors.

The Register of Matais is kept by the Registrar of the Land and Titles Court pursuant to the provisions of the Land and Titles Court Ordinance. Section 30 of the said Ordinance provides -

- "30. (1) There shall be kept in the Court by the Registrar a Register of Matais and title holders to be called the "Register of Matais" in which shall be entered the names of such persons as are from time to time appointed the rightful holders of Samoan names or titles in accordance with the provisions of this Ordinance together with such other particulars as may from time to time be prescribed.
- (2) No entry of the name of any person shall be made in the Register of Matais except pursuant to the directions of the Registrar.
- (3) The Registrar may cause the name of any person to be removed from the Register of Matais if -
- (a) it is proved to the satisfaction of the Registrar that he has died or has been registered in error; or
- (b) the removal of this name from the Register is directed by an order of the Court; or
- (c) he satisfies the Registrar that he has vacated the title."

Section 31(3) of that Ordinance then provides as follows -

- "(3) The Registrar on receipt by him of the particulars referred to in subsection (2) of this section from a Pulenu'u shall enter the name of that person in the Register of Matais

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as the rightful holder of the name or title to which he has been appointed."

If objections are received by the Registrar of the Land and Titles Court to the entry of a matai title then the said Ordinance lays down the procedure to be followed in Section 31(4) which reads -

"(4) The provisions of Part V of this Ordinance shall supply in respect of any objections received by the Registrar to any such appointment and after any such objection has been disposed of the Registrar shall make such entry in the Register of Matais as may be directed by the Court."

The objection to a Matai title must in general in the practice of the Land and Titles Court be made by a member of the aiga potopoto of the said title. If made by anyone other than a member of the aiga potopoto of that title, the Land and Titles Court and/or the Registrar of that Court would not entertain the objection on the grounds that such person would not have any valid right to make any such objection.

It is pertinent to note that the Land and Titles Court has exclusive jurisdiction in all matters relating to Samoan names and titles - vide Section 37(a) of the Land and Titles Protection Ordinance 1934.

Also Section 34(a) -

"There is hereby constituted and established in and for Western Samoa a Court of record to be called "The Land and Titles Court" which shall have all the jurisdiction and powers specially conferred by this Ordinance and all the powers inherent in a Court of record."

The Constitution of Western Samoa provides in Article 103 as follows:

"There shall be a Land and Titles Court with such composition and with such jurisdiction in relation to matai titles and customary land as may be provided by Act."

The Registrar of Electors therefore has no power in my view to regulate the enrolment of matais - this is peculiarly within the province of the Registrar of the Land and Titles Court. However, under the Electoral Act 1963 the Registrar of Electors is himself entitled to object to the name of any person being on the Electoral Roll on the ground that that person is not qualified to be registered as an elector - vide Section 27(1) of the Electoral Act 1963.

Also there is power in the Electoral Act 1963 for any elector to object to the name of any person being on the roll for a constituency and Section 26 of the said Act reads -

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"26. Elector's or voter's objection -

- (1) Any elector or voter may at any time object to the name of any person being on the roll for a constituency, or individual voters, upon the ground that -
 - (a) The person is not qualified as an elector in terms of section 16 of this Act; or
 - (b) The person is not qualified as a voter in terms of section 19 of this Act; or
 - (c) The name should appear on some other roll; or
 - (d) The person whose name is objected to is also registered as an elector or voter under the same or another name either on the same or another roll.
- (2) Every objector shall make his objection in writing specifying particulars of the objection and the grounds thereof, and shall serve his objection on the Registrar and a copy thereof on the person objected to.
- (3) Unless within ten days after the service of the copy of the objection the person objected to agrees with the Registrar that he is entitled to have the entry objected to retained on the roll, or the objection is withdrawn, the Registrar shall refer the objection to a Magistrate's Court, and shall notify the parties of the time and place appointed for the hearing."

The Registrar of Electors is not permitted to remove names from the Electoral Roll unless pursuant to an order of the Magistrate's Court on an objection filed pursuant to Section 26 of the Electoral Act or on the Registrar's objection under Section 27 of the said Electoral Act. Section 32 of the said Act provides -

"32. Removal of names from roll by Registrar -

- (1) The Registrar shall, at any time except as provided in subsection (3) of this section, remove from any roll -
 - (a) The name of every person not qualified to be registered as an elector or voter who requests in writing that his name be removed from the roll; and
 - (b) The name of every person of whose identity the Registrar is satisfied and whose death has been notified to him by the Registrar of Deaths.
- (2) Notwithstanding anything in this Act the Registrar, on being satisfied that the name of any person has been omitted or removed from any roll by mistake or clerical error, or through false information, may restore the name of that person to the roll at any time not later than fourteen clear days before polling day.
- (3) Except as provided in subsection (2) of this section it shall not be lawful for the Registrar to enter on or remove from any roll the name of any person after the date fixed for the closing of the roll and before the day following the polling day in connection with which the roll has been closed.

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- (4) If the Registrar offends against the provisions of this section he shall be liable to a fine not exceeding twenty pounds for every name improperly entered on or removed from the roll."

It is common ground that the Petitioner and the First Respondent entered into what has been termed a "matai race". In my view it was a shameful deviation from established Samoan Custom to create matais purely and simply for the purpose of obtaining additional votes at the General Election. The prestige and honour pertaining to the rank of a matai is thereby seriously imperilled and if this course of conduct became widespread the whole matai system in Western Samoa would be in jeopardy. The Petitioner claims that the First Respondent embarked on such a course of action and claims that it was an illegal practice within the meaning assigned to those words in Section 99 of the Electoral Act 1963 and that the election should be avoided under Section 113 of the said Act. It was clear from the evidence that the Petitioner had himself indulged in, or permitted, the creation of additional matais and the charge he levels at the First Respondent is one that the First Respondent could quite properly level at the Petitioner. However, I have to decide (*inter alia*) whether such course of conduct on the part of the First Respondent was an illegal practice which would avoid the election.

Before I turn to a consideration of the allegations in the petition and the evidence adduced at the trial, I should address myself to the onus of proof.

The Electoral Act 1963 is silent upon the matter of standard of proof.

In Halsbury's Laws of England 3rd Edition Vol.14 p. 288 it is stated by the learned authors -

"Before upsetting an election the Court ought to be satisfied beyond all doubt that the election is void."

In a Canadian Case Welland Election, Buchner v. Currie (1875) Hodgins Election Reports p. 187 it is stated -

"Before subjecting a candidate to the penalty of disqualification the Judge should feel well assured beyond all possibility of mistake that the offence charged is established. If there is an honest conflict of testimony as to the offence charged or if acts or language are reasonably susceptible of two interpretations one innocent and the other culpable the Judge is to take care not to adopt the culpable interpretation, unless after the most careful consideration he is convinced that in view of all the circumstances it is the only one which the evidence warrants his adopting as the true one."

Again in another Canadian case Cameron v. Beaton (1915) 48 Nova Scotia Reports p. 353 the standard of proof required in charges made in an electoral petition was stated as follows:

"A charge which involves disqualification should be proved beyond reasonable doubt to warrant a finding adverse to the successful candidate."

See also In re Wairau Election Petition (1913) 31 N.Z.L.R. 321.

With the above statements as to the law relating to the standard of proof, I respectfully agree.

I turn now to the allegations in the petition and a consideration of the evidence.

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The first ground advanced by the Petitioner was that the persons named in paragraph 3 of the said petition were persons who voted in the General Election and who were at that time all under 21 years of age. The Petitioner called 12 of these persons and 6 of them were found to be under 21 years of age - viz. Mauava Sueni, Vaipapa Ta'ape, Fili Fiva, Siufanua Popo, Malouatasi Iamepa, Tauolo Alapati. The other 6 called by the Petitioner were all over 21 years and the Petitioner saw fit not to call Leololo Aigaga and Tauauvao Sueni. It has been ascertained by this Court that the 6 persons who were under 21 years of age and who voted in the General Election all voted for Va'ai Kolone. This Court hereby orders that these votes be disallowed pursuant to Section 111(4) of the Electoral Act 1963.

The next allegation in the petition reads -

"That Utufa'asili Popili and 160 titles were objected to by certain petitioners. The records are with the Land and Titles Court. Most of these matais have been abolished by common agreement of the parties concerned. The objections were lodged by 20 January 1967 long before the elections."

This allegation is interwoven with allegation No. 3 in the petition which reads as follows:

- "3. That most of these titles were created against every principle of faa-Samoa and even the Land and Titles Protection Ordinance. The Registrar or his representatives condoned this irregularity insofar as most of these matais were mass-produced within the Government Compound in Tuasivi - well within the view of the Registrar or his representatives. This led to forgery on a grand scale, here, I am referring to the signature of the Pulemu'u forged principally by Uili Va'ai and Oloapu Iose and to impersonations, i.e., taking of the oath by one on behalf of the other, among practitioners of impersonations were Faifeau Tapu otherwise known in the Electoral Roll as Oloapu Faifeau and Tutomu To'omata Metu."

These allegations are levelled at both the Registrar of the Land and Titles Court and the Registrar of Electors. I shall deal firstly with the allegations so far as the Registrar of the Land and Titles Court is concerned. As has been said (supra) the Land and Titles Protection Ordinance 1934 gives exclusive jurisdiction to the Land and Titles Court in all matters relating to Samoan titles: vide Section 37(a). Further in Section 31(3) as was mentioned above -

"The Registrar on receipt by him of the particulars referred to in subsection (2) of this section from a Pulemu'u shall enter the name of that person in the Register of Matais as the rightful holder of the name or title to which he has been appointed."

The Provision renders it mandatory upon the Registrar to enter in the Register of Matais the name of any person whom the Pulemu'u has declared to be the holder of a matai title - and in fact Section 32 of the said Ordinance renders it an offence if the Registrar without lawful excuse fails so to act. The right of objection is covered in Section 31(4) of the said Ordinance and I have dealt with this (supra). The Petitioner claims "certain petitioners" objected to the said titles and no doubt the Registrar of the Land and Titles Court dealt with those objections in accordance with the provisions of the said Ordinance. It is not I believe the function of this Electoral Court to delve into matters which are by Statute peculiarly within the province of the Land and Titles Court and its Registrar and in fact for reasons herein after given I believe this Court has no power so to do.

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The Registrar of Electors in compiling his Roll no doubt relied in the first place on the entries made in the Matai Register and unless he believed or had cause to believe that the persons so registered as matais were under 21 years of age or were disqualified for some other reason from being classed as electors then the Registrar is in my view entitled to enter them on his Electoral Roll.

I agree with the Petitioner when he says that if the Registrar of Electors had been personally aware that matais registered were under 21 years of age or had lost their citizenship or otherwise unqualified to be registered as electors that he would have been in dereliction of his duty not to have prosecuted proceedings against them to have their names removed from the Electoral Roll. However, in the instant case there was no evidence that the Registrar of Electors was so aware and the Petitioner certainly did not call any nor did he give evidence himself.

It is true that certain objections were filed in the Magistrate's Court at Apia in respect of certain persons being on the Electoral Roll and these objections were duly heard by the Magistrate's Court. The grounds of objection in each case were that the matai title had not been confirmed, and that an objection had been lodged in the Land and Titles Court Office at Mulinuu. The learned Magistrate who heard the objections apparently dismissed the objections and no directions were given to the Registrar of Electors to amend his Electoral Roll as a result of the objections filed in the Magistrate's Court. The question then posed by the Petitioner is whether the Registrar of Electors should embark on an inquiry whether a person entered in the Matai Register is in fact duly qualified as a matai. It is my view that the Registrar is restricted to satisfy himself on such matters that the person so registered as a matai is 21 years of age or over and that he has retained his citizenship. The Registrar of Electors cannot in my view embark on an inquiry as to whether the matai title has been duly conferred - to do so would surely be usurping the function which by Statute is peculiarly within the province of the Land and Titles Court and its Registrar. In my view, also, this Electoral Court should not embark on any such inquiry, viz, whether a matai title has been properly conferred as this right or power is exclusively within the jurisdiction of the Land and Titles Court. The Supreme Court has no power to investigate and control decisions of the Land and Titles Court and Section 61 of the Land and Titles Protection Ordinance 1934 states:

"61. Neither the Supreme Court of New Zealand nor the High Court shall exercise control over the Land and Titles Court (whether in respect of want of jurisdiction or otherwise) by way of appeal certiorari mandamus prohibiti on or otherwise howsoever."

Likewise the powers of the Registrar of the Land and Titles Court on matters of matai titles and disputes thereover are very wide and in certain cases, a decision by the Registrar is deemed to be an order of the Land and Titles Court and enforceable accordingly.

Sections 63, 64 and 65 of the said Ordinance provide as follows:

"63. If the Registrar (but not a Deputy Registrar) or the Administrative Officer, Savai'i, is satisfied that a dispute has arisen between Samoans which is within the jurisdiction of the Court and is likely to be the subject matter of proceedings under this Ordinance he may at any time before the commencement of proceedings make such order as to him may seem meet to restrain any Samoan from -

(a) Remaining in possession of or entering upon any Samoan land;

(b) Holding or using any Samoan name or title;

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- (o) Exercising any right or doing any act matter or thing concerning or affecting any Samoan land or any Samoan name or title or Samoan freehold or Samoan interest in freehold land within the meaning assigned to the last two expressions by section 13 of this Ordinance.

"64. Any order under the last preceding section may be made ex parte or otherwise and shall remain in full force and effect until the final judgment of the Court:

Provided that:

- (a) The President may at any time after the commencement of proceedings upon the application of any party affected by such Order modify, vary or rescind the same;
- (b) The Registrar (but not a Deputy Registrar) or the Administrative Officer, Savai'i, may at any time before the commencement of proceedings upon the application of any person affected by such Order modify, vary or rescind the same.

"65. Every Order may under sections 62 or 63 hereof shall be deemed to be an order of the Court and shall be enforceable accordingly."

It would not in my view therefore be competent for the Registrar of Electors to question the decision of the Registrar of the Land and Titles Court on a decision relating to a matai title nor is it competent for this Electoral Act (sic) to exercise control over any decision of the Land and Titles Court in view of the express provisions of the said Ordinance.

The Petitioner claims in his petition that forgery was perpetrated on a grand scale by Uili Va'ai and Oloapu Iose in signing the Pulemu's signature on saofa'i certificates. The Court investigated these allegations at length and the Petitioner called evidence in support of his allegations from Uili Va'ai and Oloapu Iose. It was stated in the evidence of Uili Va'ai and Oloapu Iose that the Pulemu had given authority to the said Uili Va'ai and Oloapu Iose to sign his name on certain saofa'i certificates. The reason for this course was that the time for the closing of the Electoral Roll was rapidly approaching. Uili says he completed about 20 such certificates and that subsequently he recovered all these forms and had the Pulemu sign them himself personally. Oloapu says that he completed about 25 certificates on instructions from his Pulemu - his uncle - and subsequently on instructions from Vaai Kolone the certificates were recovered and the signature of the Pulemu entered thereon before the certificates were handed to the Court office.

This course of conduct while being reprehensible did not constitute forgery at law as on the evidence it appears that authority was given by the Pulemu to Oloapu Iose and Uili Va'ai to sign his name.

The final matter to which the Petitioner addressed himself was the allegation that the number of matais for Vaisala greatly exceeded, at the date of the General Election, the total population of Vaisala. The Petitioner invited the Court to conclude from this statement that the Registrar thereby permitted an unlawful election and further that the creation of these matais constituted an illegal practice. It is true to say that a large number of matais were created or permitted to be created in this constituency by the First Respondent and/or the chiefs and orators of Vaisala.

This Court is, however, bound by the terms of the Electoral Act 1963 and an election can only be avoided in certain stated cases.

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Further this Court for the reasons given cannot (except as stated above) impinge on the domain of the Land and Titles Court or the Registrar thereof in the matter of the conferring of matai titles. Whilst this Court condemns the practice of persons conferring indiscriminately matai titles for the purposes of obtaining votes in a General Election, cannot it say that it is an "illegal practice" within the meaning accorded to those words in the Electoral Act 1963?

Section 99 of the Electoral Act 1963 reads -

"99. Procurement of voting by unqualified electors or voters -

Every person is guilty of an illegal practice who induces or procures to vote at any election any person whom he knows at the time to be disqualified or prohibited, whether under this Act or otherwise, from voting at that election."

In this Court on the evidence adduced at the trial of this petition entitled to say that any of the matais created or permitted to be so created by the First Respondent were unqualified as electors apart from those six who were proved to be under 21 years of age? Remembering the standard of proof as above set forth this Court cannot so conclude and accordingly the petition is dismissed but the number of votes as having been recorded in the Election for Vaai Kolone is reduced by 6 to 694 and the majority of Vaai Kolone over Tufuga Efi is accordingly reduced to 133.

However, in conclusion the Court expresses its strong disapproval of the action taken by the parties to this petition in indiscriminately creating or permitting to be created matais ostensibly for the sole purpose of obtaining additional votes. This course of conduct if adopted generally in the various constituencies throughout Western Samoa would lead to the total and complete breakdown of the matai system. The Legislature if it wishes to preserve the matai system will need to give urgent consideration and attention to this problem and by legislation prevent such an occurrence in future.

The sum of £50 has been lodged with the Supreme Court as security for costs. I hereby order -

- (a) THAT the sum of £50 be and the said is hereby fixed as Court costs payable by the petitioner in this matter.

I make no order as to costs in favour of the First Respondent.

As the Second Respondent is a servant of the Western Samoan Government no order as to costs is made in his favour.