

IN RE ELECTION PETITION RE FA'ASALELEAGA NO. 4

MULITALO SIAFAUSA v I'IGA SUAFOLE ET AL

Supreme Court Apia
5 May 1976
Scully CJ

ELECTIONS (Candidates polling equal number of votes) - Seat declared vacant pursuant to Articles 44, 46 and 47 of the Constitution.

APPLICATION by the Chief Returning Officer pursuant to Article 47 of the Constitution.

Registrar of Voters joined as second respondent.

Stevenson for petitioner.
Enari for first respondent.
Slade for second respondent.

SCULLY CJ. Article 44 of the Constitution Clause (1) (a) states:-

The Legislative Assembly shall consist of:

One member elected for each of forty-one territorial constituencies having such names and boundaries and including such villages or sub-villages or villages and sub-villages as are prescribed from time to time by Act.

Fa'asaleleaga No. 4 is one of these constituencies.

In the case before us there was a tie in the voting so no one member was elected as prescribed.

Article 46 of the Constitution provides:-

(1) Every Member of Parliament shall cease to be a Member at the next dissolution of the Legislative Assembly after he has been elected or previously thereto if his seat becomes vacant under the provisions of Clause (2).

(2) The seat of a Member of Parliament shall become vacant -

- (a) upon his death; or
- (b) if he resigns his seat by writing under his hand addressed to the Speaker; or
- (c) if he ceases to be a citizen of Western Samoa; or
- (d) if he becomes disqualified under the provisions of this Constitution or of any Act.

Article 47 provides:-

All questions that may arise as to the right of any person to be or to remain a Member of Parliament shall be referred to and determined by the Supreme Court.

As there is a tie in the voting the first respondent has no right to be a Member of Parliament and cannot remain a Member of Parliament. I therefore determine that the seat is vacant as from 27 April, 1976.