

REGISTRAR OF ELECTORS AND VOTERS

v

MACDONALD (HANSINE MONTEZ)

Supreme Court
10, 20 September 1979
Nicholson CJ

ELECTIONS (Qualification of voters) - New voters (Registration on Individual voters' roll) - Interpretation of s 19 of the Electoral Act 1963 - Fair, large, and liberal interpretation to be given section to include both children whose fathers were dead and those whose fathers were alive at 30 November 1963 and who were either registered or qualified to be registered on the European electoral roll at that date.

STATUTES (Interpretation) - s 19(1) of the Electoral Act 1963 given fair, large, and liberal interpretation in accordance with s 5(i) of the Acts Interpretation Act 1974 - Question of whether father of child applying for registration as a voter was alive or dead at 30 November 1963 held irrelevant - Significant words in section held to be "would have qualified" to be on the European electoral roll.

(Policy of Electoral Act 1963) - No intent by the Legislature 'to gradually phase out' the Individual voters' roll is manifested in Part IV of the Act.

Appeal by way of case stated from Magistrate's decision that respondent qualified to be registered as a new voter pursuant to s 19(1) of the Electoral Act 1963.

Appeal dismissed with reasons varying the interpretation placed on the section by the learned Magistrate.

Sapolu for appellant.
Epati for respondent.

Cur adv vult

NICHOLSON CJ. This is an appeal by way of case stated from a determination of the Magistrate's Court sitting at Apia on an application by the respondent for registration on the Individual voters' roll as a new voter in accordance with the provisions of section 19 of the Electoral Act 1963.

The facts appearing from the case are that on the 2nd of July, 1979 the appellant gave written notice to the respondent indicating that the respondent's application was declined on the basis that as the respondent was under 21 years of age on the 30th November, 1963 her father's name would have had to have been on the European electoral roll as at that date, which it was not, for her to have qualified. The respondent then gave notice to the appellant on the 11th day of

July, 1979 requiring the appellant to refer the claim of the respondent to the Magistrate's Court pursuant to the terms of section 23(4) of the Electoral Act 1963.

At the hearing before the learned Magistrate the following facts were agreed upon:-

1. The respondent was born in Western Samoa on the 13th October, 1943, so that as at the 30th day of November, 1963 she was 20 years of age.
2. The respondent's father Joseph Edmund Stehlin was born in Western Samoa on the 1st day of November, 1919 and was living as at the 30th day of November, 1963 and is, in fact, still alive today.
3. The name of the respondent's father was not entered on the European electoral roll as at the 30th day of November, 1963, but he was qualified to be so entered, his name having last appeared on that roll in 1957.

The learned Magistrate after argument determined the reference by the Registrar of Electors and Voters in favour of the respondent, and the appellant, the Registrar of Electors and Voters, appeals from that determination.

Section 19(1) of the Electoral Act 1963 deals with the qualifications of voters for the Individual roll. It reads in part as follows:-

19. Qualifications of voters - (1) Subject to the provisions of the Constitution and of this Act every person shall be qualified to be an individual voter and to have his name entered on the Individual Voters Roll if he is a citizen of Western Samoa of or over the age of 21 years and not disqualified as a candidate for election by virtue of any of the provisions of section 5 of this Act, and if -

(a) His name was entered on the European electoral roll on the 30th day of November 1963; or

(b) He -

(i) Is the child of a father whose name was entered on, or who if alive on the 30th day of November 1963 would have qualified to have his name entered on, the European electoral roll on the 30th day of November 1963; and

(ii) Was unborn or had not attained the age of 21 years on the 30th day of November 1963; or

There is no suggestion that the respondent is disqualified by virtue of the provisions of section 5 of the Electoral Act, and the issue before me appears to be the matter raised by counsel for the appellant, namely, do the words contained in section 19(1) (b) (i) mean that the respondent must be the child of a father who had died before the 30th of November, 1963, but who, if he had survived to that date, would have qualified to have his name entered on the roll.

In support of his argument, Mr Sapolu made several submissions. He contended that it was the intention manifested by Part IV of the Electoral Act, of which section 19 forms part, to phase out the Individual voters' roll, but the learned Magistrate's interpretation would effectively increase the roll. In support of this submission, he referred the Court to the provisions of section 19(2) section 24(1) and 24(2) and section 19(1) (b) itself. He further submitted that if the meaning that Parliament intended by the words of this section were not entirely clear then the Court is entitled to have regard to the schedule to the Electoral Act and also to the Samoan version of the Electoral Act to assist it in its task of interpretation. Thirdly, he submitted that the presumption of the rules of interpretation that

a provision encroaching on the rights of an individual must be interpreted in favour of the individual does not apply in this case. And finally, he submits that the learned Magistrate's interpretation of the words of the section as opposed to the interpretation the appellant places on the section is likely to lead to injustice and absurdity. The Court, of course, is enjoined by section 5(i) of the Acts Interpretation Act 1974 to accord any legislative provision "such fair, large, and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment according to its true intent, meaning, and spirit." It should be noted too, that by section 5(g) of the same Act every schedule or appendix to an Act shall be deemed to be part of such Act.

Dealing with the first argument put forward by Mr Sapolu that the policy of the Act is to phase out the Individual voters' roll, on examination of the Act, I conclude that this submission is not justified. The provisions of section 19(2), for example, merely indicate that a person who holds a matai title, or who exercises any customary right in relation to customary land, or who is married to such a person, shall not be qualified to be on the Individual voters' roll. Again in section 24(1), every person who takes a matai title, or begins to exercise any customary right in relation to customary land, or who marries such a person, is no longer qualified to be on the Individual voters' roll. These provisions to my mind are nothing more than measures designed to preserve the distinction between the Individual voters' roll and the Electoral roll provided for by section 16 of the Act. They are not indicative of any policy on the part of Government to phase out the Individual voters' roll as Mr Sapolu suggests. Indeed, there are situations envisaged by this Act which suggest an intention to preserve an Individual voters' roll indefinitely. For example, the citizen who obtains his citizenship by naturalisation must in terms of section 19(1)(c) have his right to be on the Individual voters' roll, and one must assume that the naturalisation of citizens will be a continuing process. Again, the proviso to section 25(2) actually allows a woman who has lost her qualification on the Individual voters' roll by virtue of marriage to recover it upon the death of her husband, or upon divorce. This provision is hardly in accordance with a policy of phasing out the Individual voters' roll.

Mr Sapolu's next argument that the presumption in favour of an individual of an interpretation regarding a provision encroaching on the rights on an individual should not apply here is difficult to accept. He suggests that these rights must be "existing rights" and no "existing rights" would be encroached on by his interpretation of the subsection. In the context of legislation setting out voting rights for individuals, however, it seems to me that the Court ought to take the liberal interpretation of legislation so as to give to the widest range of persons permissible within the terms of the legislation the right to vote, and I say this, accepting at the same time that the provisions of this Act for voters' qualifications are peculiar to Western Samoa and must be interpreted in the light of Western Samoan conditions.

Mr Sapolu's remaining submission was that if the learned Magistrate's interpretation is accepted, then it would mean that the children, whose fathers were dead on the 30th of November, 1963, but who would have qualified had they lived, are excluded from entry on the Individual voters' roll, while those children, whose fathers were careless of their rights and failed to enter their names on the roll, but who survived as at the 30th November, 1963, would have the right to entry, a result which he claimed was unjust and absurd. I would concede that line of argument, but at the same time I feel that the alternative interpretation which Mr Sapolu puts forward has an element of injustice about it also. It seems unreasonable and unlikely to me that the Legislature should have intended that the man who is careless of his rights should thereby deprive his children of their rights in relation to voting.

Turning to the words of the section itself, I have come to the conclusion that little or no emphasis has been placed by counsel or the learned Magistrate on the words "would have qualified" which are contained in the subsection in question. I note that the learned Magistrate in his judgment concluded that the father had to be in being as at the 30th of November, 1963 for the child to qualify. I regard this as too narrow an interpretation, just as I feel that the appellant's submission places too narrow an interpretation upon the words used. If the learned Magistrate's literal interpretation is correct, it is difficult to understand why the section did not simply say, "he (1) is the child of a father whose name was entered on or who on the 30th of November, 1963 qualified to have his name entered on the roll." There would not have been any need to use the words "if alive" nor the words "would have". Conversely, if the appellant's contention is correct, one would have expected the Legislature to spell out by clear words that only the children of fathers already dead on 30th November, 1963 would qualify.

I conclude that the fair, large, and liberal interpretation which best ensures the attainment of the object of the Act, namely, to lay down qualifications for electors and Individual voters, is that these words are intended to cover the children of fathers, who were either dead or alive on the 30th of November, 1963. In other words, the question of whether or not the father was in fact living as at the 30th November, 1963 is irrelevant. What the Act strives to do is to provide a notional qualification, a hypothesis, by saying that if the father's age and condition were such that he would have been entitled to entry on the roll on the 30th November, 1963 if he survived to that date, then the children of such a person qualify, but whether in fact he did or did not survive to the 30th of November is of no consequence. I can see no justification for excluding by the use of these words either the children whose fathers died before the 30th of November, 1963, or those whose fathers survived on the 30th of November, 1963.

I note Mr Sapolu has referred to the Schedule to the Act and the questionnaire contained therein in form 2. He refers in particular to certain questions 8, 9, 10, 11 and 14. Reading those questions, they certainly do not accord with the learned Magistrate's interpretation of the section, but I think that they are not in discord with the interpretation which I have placed on this section. It follows from what I have said that the conclusion reached by the learned Magistrate that the respondent's application for entry on the roll was justified is upheld, but at the same time I make it clear that in my view the interpretation which he has placed upon the words of the section are too narrow to achieve the true intent, meaning, and spirit of the Act. The question posed upon the case is answered in the negative.

I am prepared to hear counsel on the question of costs.