

ELECTION PETITION RE PALAULI (LE FALEFA)
Territorial Constituency

No. 41 (No. 3)

LEOTA PITA v MAPUILESUA PELENATO

Supreme Court Apia
1, 3 October 1979
Nicholson CJ

CONSTITUTIONAL LAW (Citizenship) - Loss of citizenship - The Citizenship Act 1972 (replacing the Citizenship of Western Samoa Ordinance 1959) by omitting the provision in the former legislation for automatic loss of citizenship on acquisition of nationality or citizenship of another country contemplates dual citizenship - Loss of Western Samoan citizenship may result from renunciation pursuant to s 13 of the Act or by deprivation pursuant to ss 14, 17 and 19 by the Minister at his discretion "if he is satisfied it is not conducive to the public interest that such person should continue to be a citizen", and providing such person must be notified of the Minister's intention and given an opportunity to refer the matter to the Supreme Court for inquiry.

ELECTIONS (Qualification of candidates) - Electoral Act 1963 s 5 - Member of Parliament retaining citizenship in both Western Samoa and the United States of America held qualified for election - Omission from the Citizenship Act 1972 of the provision for automatic loss of citizenship on acquisition of nationality or citizenship in another country as contained in former legislation contemplates dual citizenship - Until a person with dual citizenship either renounces his citizenship pursuant to s 13 or is deprived of it pursuant to ss 14, 17 and 19 of the Act he is a citizen of Western Samoa and qualified for election.

PETITION for a declaration that the election of the respondent as a Member of the Legislative Assembly in the By-election of 18 August 1979 was invalid.

Petition dismissed with costs.

Mrs Drake for petitioner.
Epati for respondent.

Cur adv vult

NICHOLSON CJ. This is an election petition in respect of the Palauli (le Falefa) Territorial Constituency and relates to the By-election held in that constituency on the 18th August, 1979. The respondent was the successful candidate and the petitioner was the next most successful candidate. The petition alleges that the respondent was not qualified to stand for Parliament at the time of the By-election. The allegation is, according to the petition, that

in or about the month of August of 1972, the respondent became a naturalised American citizen under the names of Tu'ulima Pelenato Laufasa in Honolulu, Hawaii, in the United States, and by virtue of that ceremony of naturalisation, the respondent became disqualified from being able to stand for Parliament.

At the hearing no evidence was called, counsel merely making submissions and presenting to the Court four documents by consent. On behalf of the petitioner, a certified true copy of a petition for naturalisation relating to Tu'ulima Pelenato Laufasa was produced. This document shows that on the 14th of August, 1972 at Honolulu, Hawaii, Tu'ulima filed a petition for naturalisation as a United States citizen and it seems from the back of the document that the petition was formally granted on the 17th of September, 1972. There appears to be no dispute that the respondent and Tu'ulima are one and the same person.

On behalf of the respondent, counsel presented to the Court three documents. The first is a letter dated 1st of October, 1979 from the Acting Secretary to Government confirming that the bearer of the note, Leuila Paila Pelenato, is a citizen of Western Samoa, and that this person was naturalised as of the 2nd December, 1975 up to the present, or during the time of the By-election, which was the 18th of August, 1979. There was no indication given to me from the Bar that there was any dispute that the person mentioned in this note and the respondent Mapuilesua Pelenato are one and the same person.

The second document presented on behalf of the respondent, is a certificate from the Chief Immigration Officer of American Samoa relating to Mr Ioasa Pelenato Tauapua'a Laufasa confirming that he had applied for a non-immigrant visa to enter the United States on September 10th, 1976, that he had been travelling on a Western Samoan Passport No. E39646, and he was issued with a visiting visa for the United States on 10th September, 1976. The certificate included a statement that no visa would have been issued to him if he had been a citizen of American Samoa, or of any other possession of the United States, and that as far as the American Samoan records were concerned, Mr Laufasa was a citizen of Western Samoa.

Finally, the respondent produced a current passport issued by the Western Samoan Government in the name of Mr Ioasa Pelenato Tauapua'a Laufasa, on the 8th of June, 1976 valid until the 7th of June, 1981. Again there appears to be no dispute by counsel that this person named in these last two documents and the respondent are one and the same person.

Mrs Drake for the petitioner argued that the situation is not governed by the Citizenship Act 1972 of Western Samoa, nor by its predecessor, the Citizenship of Western Samoa Ordinance 1959. She states that there is simply no provision to deal with a case of a citizen of Western Samoa, who takes the citizenship of another country, but takes no definite step to renounce his citizenship in Western Samoa, or in respect of whom nobody brings the position to the Minister's attention. The Act does provide by section 13 for renunciation of Western Samoan citizenship by a declaration in a prescribed form, which the Minister administering the Act can cause to be registered, and thus the person concerned will cease to be a citizen of Western Samoa. Again, by section 14 of the Act, the Minister may by order deprive any person of his citizenship if he is satisfied that that person has at any time while a citizen of Western Samoa and of full age and capacity acquired the nationality or citizenship of any other country by any voluntary and formal act other than marriage, or has taken any oath or made any declaration or acknowledgement of allegiance of adherence to any other country, but Mrs Drake suggests the Minister will only act when the case is brought to his attention, which has not been done here. In her submission, if a person becomes a holder of dual citizenship, he must be disqualified from being a Western Samoan citizen within the meaning of Article 45 of the Constitution and section 5 of the Electoral Act 1963.

For the respondent, Mr Epati argued that the petition itself does not disclose a good ground for declaring the respondent disqualified

under the Electoral Act 1963. Qualifications of Members of Parliament are contained in section 5 of the Electoral Act 1963, which provides that a candidate for election as a Member of Parliament must be a citizen of Western Samoa. Similarly, Article 45 of the Constitution of Western Samoa requires that a Member of Parliament be a citizen of Western Samoa. Mr Epati submitted that there was nothing in the petition or the document presented to the Court by the petitioner to show that the respondent was not a citizen of Western Samoa at the material time surrounding the By-election. On the contrary he suggested that the three documents he produced confirmed the respondent's Western Samoan citizenship.

The Citizenship Act 1972 came into force on the 9th of August, 1972, a matter of five days before the respondent concurred in the filing of his petition for naturalisation in the United States. Prior to that time, the Citizenship of Western Samoa Ordinance 1959 governed the situation and by virtue of section 10(b) of that Ordinance a citizen of Western Samoa of full age and capacity ceased to be a citizen of Western Samoa automatically if he did or concurred in or adopted any act, other than marriage, whereby he might become a national or citizen of any foreign country. The Citizenship Act 1972 did not repeat this provision, and, instead, clearly contemplates by the terms of sections 14, 17 and 19 that a person may hold his citizenship of Western Samoa contemporaneously with the citizenship of another country, but that the Minister may, by adopting certain procedures, deprive such a person of his Western Samoan citizenship. Section 19 gives the Minister who receives any application to deprive a person of his citizenship a complete discretion as to whether he grants or refuses it, and by section 17(1) he is constrained not to deprive any person of his citizenship unless he is satisfied that it is not conducive to the public interest that such person should continue to be a citizen. Provision is made for the person concerned to receive notice of the Minister's intention to deprive him of his citizenship and to give him an opportunity to have the matter referred to the Supreme Court for inquiry. Thus the whole concept of the automatic loss of citizenship under the 1959 Ordinance has disappeared under the Act of 1972 and instead is replaced by procedure involving the exercise of a Ministerial discretion.

I conclude that the Citizenship Act 1972 does apply to the present situation of the respondent, who, it appears, is the possessor of dual citizenship in Western Samoa and the United States. There is no evidence before me to show that the Minister has taken any step to deprive him of his Western Samoan citizenship. There is no allegation in the petition to that effect, and I am satisfied that as the law stands in Western Samoa, a person holding dual citizenship shall, until such times as the Minister acts to deprive him of his citizenship of Western Samoa, or until he renounces citizenship, remain a citizen of Western Samoa. The Constitution and the Electoral Act 1963 are silent on the position of persons holding dual citizenship, but that legislation requires merely that a candidate be a citizen of Western Samoa, and the respondent, on the face of it, has that qualification. Under these circumstances, the petition must fail, and I shall report to the Honourable Speaker of the House accordingly.

The petitioner will pay costs of \$60.00 to the respondent.