

IN THE SUPREME COURT OF TONGA
CIVIL JURISDICTION
NUKU'ALOFA REGISTRY

CV 77 of 2021

BETWEEN : MATENI TAPUELU

- Petitioner

AND : TATAFU TOMA MOEAKI

- Respondent

BEFORE HON. JUSTICE NIU

Counsel : Mr. S. 'Etika for the petitioner.
: Mrs. P. Tupou for the respondent.

Trial : 11, 12 and 13 April 2022.

Submissions : by Mrs. Tupou filed 19 April 2022.
: by Mr. 'Etika filed 26 April 2022.
: by Mrs. Tupou filed 3 May 2022.

Ruling : 06 May 2022.

RULING

The petition

- [1] The petitioner and the respondent were both candidates for the seat in the Legislative Assembly of the constituency, Tongatapu 4, which comprises Ma'ufanga, Houmakelikao, Fangaloto, 'Anana, 'Umusi, Popua, Patangata, Tukutonga, Pangaimotu and Siesia, in the general election which was held on 18 November 2021.

- [2] At the time of election, the petitioner was the current holder of the seat and the respondent was also a member of the Legislature Assembly by reason of having been appointed in January 2021 as Minister of Labour, Commerce and Industries under clause 51 (2) (a) of the Constitution.
- [3] After the election, the respondent was declared the holder of the seat.
- [4] The petitioner now claims in his petition that the respondent be unseated upon the grounds that he is guilty of the following:
- (a) that he committed bribery by giving \$100 to one Nikisoni Tomasi, an elector of Tongatapu 4, to induce him to vote for him;
 - (b) that he committed bribery by making promises to procure loans for a group of female electors at Patangata to induce them to vote for him;
 - (c) that he committed bribery by making promises through another person to give free plastic water tanks to electors of Patangata to induce them to vote for him;
 - (d) that he committed bribery by making promises through another person to electors at Patangata that he would build dwelling houses for them for a sum of \$3,000 per house to induce them to vote for him;
 - (e) that he committed bribery by making promises through another person to upgrade the roads in the electorate to induce the electors to vote for him.

The defence

- [5] In respect of the 4 claims of the petitioner, the respondent says that:
- (a) he did give \$100 to Nikisoni Tomasi but it was without any intention to induce him to vote for him;
 - (b) he did not make any promise to procure any loan for anyone;

- (c) he did not make any promise to procure any water tank for any one;
- (d) he did not make any promise to build any house for anyone, even for \$3,000; and
- (e) he did not make any promise to upgrade any road to induce the electors to vote for him.

Note: After the evidence for both sides were given in this trial, and when his counsel filed his submissions, the petitioner withdrew two of his claims, namely,

- (d) promises to build houses, and
- (e) promises to upgrade roads.

The evidence

[6] I will deal with each of the claims and the defence thereto and with the evidence given by each side in respect thereof in the order of each claim. The petitioner gave evidence and he called 7 witnesses. The respondent also gave evidence and he called 4 witnesses.

Gift of \$100

Evidence for the petitioner

[7] In respect of the gift of \$100, the petitioner, **Mateni Tapueluelu**, 50 years of age living at Houmakelikao, presently without work, said in his affidavit that a courageous man came to his home and told him that the respondent had bribed him with money to vote for him.

[8] **When cross-examined**, he said that he did not know the respondent well and that he would see him at the bar but did not buy him a drink. He said that the respondent did give him money for his mother in law's funeral and also for his father in law's funeral and that he was surprised that the respondent gave those monies.

- [9] At this stage, it became apparent that the petitioner had not read the affidavit of the respondent, and Mr. 'Etika confirmed that he had been served with the respondent's and his witnesses' affidavits but he had not shown them to or allow the petitioner to read them. I then directed that he did and adjourned until he had read them.
- [10] Upon resuming, I directed that his evidence in chief be resumed if he wished. He then resumed and said that the reason why the respondent gave him the money, which were 2 sums of \$500, was for him to try and stop one Michael Tokanakina from prosecuting him and also because he was applying for the position of Secretary to Government or Clerk to Cabinet, and that he faxed him to that effect.
- [11] **Upon resumption of cross-examination**, he said that he could not recall if the mother in law had died in 2018 or that the father in law had died in 2019 or that the application for the Cabinet position was in 2015. But he said that he was a Minister in Cabinet when the application was made. He said that it was the respondent's wife who gave him each sum of money and that it was the wife who asked him to try and stop the prosecution of the respondent, and that he did ask the person to stop his prosecution of the respondent.
- [12] He said that the courageous man who had come to him after the election was Nikisoni Tomasi, and that it was the first time he met him. He said that he met him may be 5 days after the election and that he was not related to him. He said he did not know if Nikisoni and the respondent were related. He said that he never gave Nikisoni any money to come and give evidence.
- [13] **Witness, Nikisoni Tomasi**, 50 years of age, of Halaleva, security at Vaiola Hospital, said that Tongatapu 4 comprised part of Ma'ufanga, Halaleva, Bay of Manumataongo, Fangaloto, Popua and Patangata. He said that he was an elector there. He said that he knew the petitioner but was not acquainted with him. He said that he only contacted him because of

the money which the respondent had given him. He identified his affidavit and corrected paragraph 18 by replacing the name "Mateo" appearing in the second line with the name "Kinikinilau Moeaki", and similarly in the third line of paragraph 19. The clerk of the Court then read aloud his affidavit after which he confirmed that its contents were true and correct.

[14] I quote his affidavit in full as follows:

1. I am Tongan citizen residing at Halaleva, Tongatapu and voter of Tongatapu 4 constituency.
2. I am a civil servant working at the Psychiatric Ward at Vaiola Hospital, married to Ma'ava Tomasi with 4 children of the marriage.
3. I am a member of the Tu'ilevatai Kava Club ("*the club*") at Bay of Manumataongo, Halaleva for many years.
4. That the club had worked very closely with the former Representative of Tongatapu 4, Mateni Tapueluelu and that we have presented to him various donations from our agricultural harvest for he occasionally visited the club friendly for the past years.
5. I recalled that before the campaign I had never seen the respondent at the club until on a Thursday night on the second week of October 2021 was the first time I have ever seen Tatafu Moeaki visited the club with other elderly men him as his campaign team.
6. I am fairly acquainted with the respondent and have known him well since young age for we grew up at Ma'ufanga.
7. He arrived later and sit from afar with other kava drinkers but have been foreshadowed by his elderly team to the club on the above night.
8. At one stage I went outside for a smoke and was approached by the respondent as he was to use the bathroom which is a separate unit from the club house.
9. We greeted each other and told me that he visited the people at 'Amanaki Fo'ou kava club and no one seems to want to talk to

him, I told him to continue on with his strategy courageously and disregard what happened.

10. He asked me where do I vote and I said at Tongatapu 4, then he asked me again who will I vote for and I told him I am not sure yet.
- 10A. He then reached into his pocket and pulled out a bundle of pa'anga notes from which he picked one bill and gave it to me and said, take this and buy something for your kids and do remember me on the poll.
11. He then went back inside to the club and I followed after my smoke. I spoke to nobody inside about what happened outside between me and the respondent.
12. After the kava I went back home and slept and in the morning my youngest child woke up and cried to my wife for some noodle to eat but my wife shut him up for there is no money to buy some with.
13. When I heard the child cried I called him up and gave him the \$100 that the respondent gave me at the club to go to the store with her mum and buy what him what he wanted.
14. When I took out the 100 pa'anga bill my wife saw it and asked me where did I got the money from, and I told her that the candidate gave it to me at the club last night.
15. When the respondent pulled out the bundle of note from his pocket I saw that it contained 100 pa'anga bills, about an inch thick, pink in colour and from it pulled out one bill from it.
16. After I took the money from the respondent, T put it into my pocket and returned inside to his group mates and sat silently without uttering a word to anyone about what happened outside between him and the Respondent.
17. I was felt guilty and regretted taking the money from the Respondent and having heard the favour asked of me to remember him on the poll for I was a strong supporter of the Petitioner for years and still is.
18. That after the petition was served on the respondent, a cousin of his but a half-brother, Kinikinilau Moeaki who lived at Ma'ufanga, approached me several at home and asked to have some good

thought on the respondent and take another statement on oath denying what appeared on the petition about the \$100 given to me.

19. I did not take his words nor did I had any sympathy on him or the respondent and had at times kept away from home to evade his insistence. I even told the petitioner and his lawyer about the push from the respondent through Kinikinilau Moeaki and my sisters to come up to me and asked to deny my statements about the money given to me by the respondent.

20. The above statements are true and correct in every respect to the best of my knowledge and belief."

[15] **When cross-examined**, he said that the respondent's father and Kinikinilau Moeaki's father are brothers and that Kinikinilau's mother is an older sister of his, Nikisoni's, mother.

[16] He said that he lives in a part of Halaleva which votes for Tongatapu 3 and there was a part of Halaleva which votes for Tongatapu 4, and that he was registered as elector for Tongatapu 4.

[17] He said that he was fairly acquainted with the respondent and that he and his brothers used to go and fish for the respondent's father for which they were paid wages, and that that was all the father did for them.

[18] He said he did not know of any help given by the respondent for his Nikisoni's father's funeral but that his brother's wife told him that they asked the respondent for help for the funeral.

[19] In respect of the evening in question, he said that he did not know beforehand that the respondent was coming to their kava club, Tu'ilevatai, and that his men came earlier in the evening and that he then came there at about 10 pm. He said that the respondent told the drinkers how he and Nikisoni used to race when they were young, and that someone spoke on behalf of the respondent and then the respondent spoke to the drinkers, about 20 people in all being there.

[20] He said that at the election he voted for the petitioner.

- [21] He said that when he went outside, the respondent went outside too and went into the toilet whilst he relieved himself outside the toilet, and that when the respondent came out of the toilet, they shook hands and talked.
- [22] He said that they had already met each other at Noble Fakafanua's residence after the respondent had been appointed as Minister, and that he was in a singing group that sang there for the occasion, and that they met then and shook hands.
- [23] He said that when the respondent gave him the \$100 note, he took it from a wad of notes folded in half and which was about one inch thick. He said that he did not take the note out of a wallet.
- [24] It was put to him that the respondent said to him as he gave him the \$100 note, "Use that for something for the kids. It has nothing to do with the election" and he said no. He said that what the respondent said to him was "Use that for something for the kids and remember me at the election". He said that he could not be wrong about what the respondent said to him.
- [25] He said he did feel guilty about taking the money but he did not tell the respondent. He said that it was wrong of him to accept the money but that he let his wife use that money for their kid.
- [26] He said that he had drunk 5 cups of kava by the time of the incident.
- [27] He said that the name "Mateo" was wrongly inserted by the lawyer in his affidavit and that it has only been read out to him for the first time when it was read in Court during this trial.
- [28] It was put to him that paragraph 9 of his affidavit was not true and that the respondent never said what he said he said, and he replied that the respondent did tell him that no one spoke to him at the 'Amanaki Fo'ou Kava Club.

- [29] It was put to him that the respondent did not ask him either of the questions in paragraph 10 and he said that he did ask him those questions and that he told him his answers.
- [30] He said that it is true that he was happy when they met and he was still happy when he gave him the money.
- [31] He said that he told the lawyer that the bundle was intended for giving away money from it but he did not see him give anyone else any money. He said he only thought that that was the purpose when he saw him take the note from it and gave it to him.
- [32] He said that he did tell a member of their club, Taufu'i, of what the respondent did, and that he himself went and told the petitioner of it, may be 2 or 3 days after the election. He said that he was not acquainted with the petitioner although he had come to the club and that they only became acquainted after he went to him after the election.
- [33] It was put to him that Kinikinilau would give evidence that he (the witness) told Kinikinilau that he (the witness) was pushed to go to the petitioner and say what he has said, and he answered that he did not tell Kinikinilau any such thing.
- [34] **I then asked questions** and he said that he had lived in Ma'ufanga, and that he had been born and raised there and that he shifted and lived at Halaleva in 1996. He said that he had become registered as an elector for Ma'ufanga and that he had voted there when there were only 3 seats for the whole of Tongatapu. He said that he then shifted in 1996 to halaleva where he has his town allotment which he has just registered in 2017. He said his registration as an elector of Ma'ufanga has not been changed up to now. He said that he has now voted 5 times as an elector in Ma'ufanga since the change from 3 seats to 10 seats for Tongatapu.
- [35] **In answer to a question from Mrs. Tupou**, he said that he has no home at Ma'ufanga.

Evidence for the respondent

- [36] The respondent, **Tatafu Moeaki**, of Ma'ufanga and Minister of Finance Revenue and Customs, said that as a community leader he was requested and expected to make charitable donations to community led works, fund raising and development including churches, the elderly and those with special needs, education and schools, youth and others. Family and friends were regular recipients of donations and charitable assistance also.
- [37] He said that since he took up senior positions in Government, Asian Development Bank and the World Bank, and more recent appointment as a Government Minister of Cabinet, it has been the case that provision of cash donations and assistance to family and friends from time to time including family occasions, seasonal festivities such as Christmas, Easter, Mother's Day, Father's Day, fund raising, celebratory events, communal kava clubs, restaurants, bars and special event is almost always expected.
- [38] He said that he and his campaign emphatically affirmed and re-affirmed consistently during and throughout his campaign the importance of the ability to vote freely without influence in any form.
- [39] He produced two letter of commendation, one from the Chairman of the Public Service Commission and the other from the Regional Director of the Pacific Sub-regional Office of the Asian Development Bank. They both stated that the respondent had made valuable contributions to their organisations with his dedication and industry in his works. In particular, the Chairman of the Public Service Commission, commended the respondent for his extra ordinary diligence, honesty and commitment to promote accountable, efficient service delivery and good governance in having reported attempted bribery on two occasions whilst he was CEO in the Ministry of Labour, Commerce and Industries in 2010.
- [40] He said that the petitioner was very much aware of his nature and tendency to give as he had been the recipient of his generosity, namely, the gift of \$500 when his mother in law died in 2018 and another \$500

when his father in law died in 2019. He said he often bought the petitioner drinks at the bar.

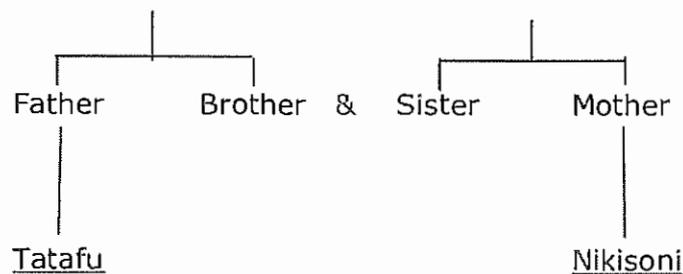
[41] He produced a copy of a letter of the petitioner to the Acting Chief Justice dated 23 December 2021 complaining that his witness Nikisoni Tomasi was being harassed by a strong supporter of the respondent, one Kinikinilau Moeaki, not to give evidence in the trial of this petition. It stated that Kinikinilau told Nikisoni:

- (a) that he did not have to stand as witness and that he could always be away from the Court;
- (b) that he could just say that he had asked the respondent for the money, and
- (c) that if he wished he could be one eligible for Government housing assistance.

It stated that Kinikinilau visited Nikisoni twice on the 22 December 2021, after the petition was served on the respondent on 21 December 2021 and once on the 23 December 2021, the day of the letter. It stated that the witness was then preferring to work long hours to avoid being visited like that at home.

[42] The respondent said that he was not asked by the petitioner whether he knew about it before he lodged that complaint. He said that he did not know about it and he had not authorised anyone to do that.

[43] He said that Nikisoni's mother's older sister was married to his father's younger brother. I would imagine that to be as follows:



He said that his uncle and Nikisoni's aunt were his next door neighbours.

- [44] He said Nikisoni and his siblings would stay a lot at their aunt's place and that he and Nikisoni and his siblings grew up together, and that they would go with his, Tatafu's father to sea fishing on his father's fishing boat until they were able to get a boat of their own. He related incidents when he himself gave money to Nikisoni's mother while she was sick in hospital, to Nikisoni's brother, Fanua, for beers at the bars, and to Nikisoni's brother in law, Tou'anga.
- [45] In respect of the night in question, he said that he met Nikisoni at the Tu'ilevatai kava club on probably the 14th October 2021 and he was happy to see him because it was the first time he met him since his appointment as Minister. He said that they met inside the bathroom and that they came out talking to each other.
- [46] He said that he had donated money inside the kava circle and knew that he only had \$170 left in his wallet and so he gave him the \$100 because he was happy to have seen him. He said that he recalled telling him to buy something for his kids and that it had nothing to do with the election because he was careful not to be misunderstood by any bystander. He said that he knew that Nikisoni was living in the electorate Tongatapu 3 instead.
- [47] He said that Nikisoni was happy and he took the money and that Nikisoni did not say anything to indicate that he was accepting the money for any reason other than as a charitable donation from a friend and that it was a happy reunion.
- [48] He said that Nikisoni was living with his, Nikisoni's brother, Timote, within the boundaries of Tongatapu 3 and that Timote and his wife were both registered as electors of Tongatapu 3 but that Nikisoni was registered as elector in Tongatapu 4, and he did not know how or why.

- [49] He said that Nikisoni does not live in Tongatapu 4 and that he and his father did not hold any registered land in Tongatapu 4.
- [50] He said that he strongly denied the implication made by Nikisoni that he only gave him the money for the purpose of the election.
- [51] He said he helped out with Nikisoni's father's funeral when he died on 25 March 2022. He said he paid \$850 for the mortuary freezer costs for 5 nights and gave \$100 to Nikisoni's brother, Fanua, as well. He said he also helped by arranging the Mosimosi Kava Club hall for the wake free of charge.
- [52] He said he only found out after receiving the petition that Nikisoni was registered as an elector in Tongatapu 4, after he confirmed it from the electoral roll of Tongatapu 4.
- [53] He produced a copy of the roll for 'Anana, Tongatapu 4 which showed that there was a name, Niki Soane Tomasi, on entry no. 186, and that it showed no name Nikisoni Tomasi at all.
- [54] He showed the Court the wallet he said he had that night and that it was thin and that it could not have held a wad of notes one inch thick.
- [55] He denied that he had told Nikisoni that he had been to the Mala'efo'ou Kava Club and that no one there spoke to him. He said that he said no such thing to him.
- [56] **When cross-examined by Mr. 'Etika**, he said that he gave the money to Nikisoni because he was family just as he had given monies several times to Tou'anga and Timote, and that he gave Nikisoni the money because he had not seen him for a long time and this was the only time they met. He agreed that Nikisoni had been raised by someone else and that was why he had not seen him for a long time. He said that it would be correct that he had not given him any money for 30 years. He denied that he had met him at the recent Kava Idol competition.

- [57] He denied that he went to the Tu'ilevatai Kava Club that evening with his supporters and that it was only him and his driver.
- [58] He said that he donated \$100 to the club that night. He said that the \$100 he gave to the club was the \$100 from the \$170 which he had in his wallet.
- [59] **I asked questions** and he said that he was wrong when he said that he went to the toilet and gave Nikisoni the \$100 and returned to the club and made his donation of \$100. He said that he first gave his \$100 donation to the club before he went to the toilet and gave Nikisoni his \$100.
- [60] He said that during his campaigning, he did not know the amount of the "holo" that was required of any drinker who sat at a kava circle. The "holo" was the cost that is normally required of each person who drinks kava in a kava circle for the evening. He said he did not ask or inquire as to what was the required "holo". He said that the money that he gave the club was for the "tou'a", the girl who filled up each bowl with kava for the drinkers. He said that he would have gone to about 50 kava clubs during the course of his campaign and that he had given between \$50 and \$100 on each occasion. He said that he did not pay for his campaigners "holo" and that they paid for that themselves.
- [61] **Mrs. Tupou asked questions** and he said that the other drinkers also donated to the "tou'a" in sums of up to \$50. He said he had arranged with his supporters to meet at the club and that two of them went there and that there was only one still there when he arrived. He said he was there for may be an hour and a half.
- [62] **Pita Vuki**, 57 years of age, the supervisor of elections since 2010, said, looking at the electoral roll for 'Anana, Tongatapu 4, that no. 186 was of Niki Soane Tomasi, and that he had looked in the rolls for the 17 electorates and had found no one with the name Nikisoni Tomasi.

- [63] **When cross-examined by Mr. 'Etika**, he was shown the birth certificate of Nikisoni Tomasi, and he said that the name of the person named in the certificate was Soane Niki Tomasi and it showed his mother as Uatau Tomasi and that his father was Petelo Tomasi. He said that Soane Niki Tomasi had been registered as an elector of 'Anana, Tongatapu 4, on 18 June 2010.
- [64] The birth certificate was produced as Page 19 of the petitioner's production.
- [65] **I asked** and he said that when Tongatapu was divided into 10 electorates in 2010, all the electors in the old electoral roll had to fill in forms and be registered anew in the respective electorates they found they were in.
- [66] **Mr. 'Etika, asked** and he said that the ID card with number "123111971039883" shown as Soane Niki Tomasi's in the roll would have the same name on it.
- [67] **Mrs. Tupou produced the national ID information of Soane Niki Tomasi and asked** and he said that the ID information and the electoral registration were of the same person, and Mrs. Tupou asked and I ordered that the ID information be entered as P.20 of the Petitioner's production.
- [68] **Kinikinilau Moeaki**, 49 years of age of Ma'ufanga, farmer, said that he knew Nikisoni very well because Nikisoni's mother was his aunt. He said that his own mother was married to Tatafu's father's younger brother, and that he lived next door to them. He said that Nikisoni and his siblings grew up in their home and only left when they were married and that they all worked for Tatafu's father.
- [69] He said that Nikisoni is currently living with his brother Timote at Halaleva, Tongatapu 3.
- [70] He said that he was shocked when he heard that the petitioner had petitioned against Tatafu and that Nikisoni was one of the witnesses for the petitioner. He said he went to Nikisoni and asked why. He said that

Nikisoni told him that he did not want to do it but that others pushed him to do it and that the petitioner came and asked him to witness for him.

[71] He said that he went to Nikisoni on his own and that Tatafu did not know of it, and that when Tatafu found out he telephoned him and asked him not to go to Nikisoni again because of the Court case.

[72] He said the gift of the money by Tatafu to Nikisoni was in accordance with Tatafu's nature because he had help that family a lot, and that Nikisoni has twisted the gift made to him to make out that it was made to induce him.

[73] **When cross-examined by Mr. 'Etika**, he said that Nikisoni had told him before that he was voting in Tongatapu 4 and he was trying to get his wife to be registered to vote in Tongatapu 4 as well because she was still registered to vote in Hihifo where she was from.

[74] **I asked him** and he said that Nikisoni was living in Halaleva up to now and that is Tongatapu 3.

[75] He said that it was Tatafu himself who told him, at a kava drinking that Nikisoni was testifying as witness for the petitioner, and that he went and spoke to Nikisoni about a week after that.

[76] **Mr. 'Etika asked again** and he said that that kava drinking was at Tatafu's place.

[77] **Mrs. Tupou asked** and he pointed out and marked on a map of the area the spot he thought Nikisoni was living. That map was produced as P.102 of the respondent's production.

[78] **Nikisoni Tomasi was recalled** and I asked him and he said that the birth certificate already produced as P.19 of the petitioner's production was his birth certificate. He said that he had always been called Nikisoni Tomasi. He said that P.20 was his registration as an elector of 'Anana in 2010.

- [79] He said that he had had his birth registered in 2008 in order that he could get a passport but he could not travel and that he used his birth certificate to get his national ID card and his registration as an elector in 2010 for the 2010 election.
- [80] **Mr. 'Etika asked** and he said that the particulars shown in the birth certificate were all correct.
- [81] **Mrs. Tupou asked** and he said that it was likely that he had had a birth certificate when he went and entered school. He said that at school he was called Nikiseni (not Nikisoni) and that in 2008 he had to make an affidavit as to his name and birth. He said he agreed that he would be about 37 in 2008.
- [82] He was shown the map P.102 and he said he agreed with the mark which Kinikinilau had made on it as where he was living. He agreed that 'Anana was to the east of and next to Halaleva.

Consideration

- [83] In considering this particular claim of the petitioner, I have to consider the points which each counsel has raised in his/her submissions. Mrs. Tupou listed the following issues:
- (a) that the recollection by Nikisoni of what the respondent said when he gave him the \$100 was incorrect;
 - (b) that Nikisoni was not an elector of Tongatapu 4;
 - (c) that the gift of \$100 was exempted under S.24 (3) of the Electoral Act (the Act).
 - (d) that the gift of \$100 was not out of character for the respondent.

Mr. 'Etika responded in respect of each of those points in his submission. I will deal with each of those issues.

What was said

[84] It is not disputed that the respondent gave Nikisoni \$100 within 3 months before the election because the gift was agreed to have been made on or about the 14th October 2021 and that the election was held on 18 November 2021, and it is not disputed that it is upon the respondent to prove that the gift was innocent. That is because S.21 (3) of the Act has provided that a gift made within the said 3 month period is deemed to have been made to influence the vote, unless the contrary be proved.

[85] What is disputed is what was said by the respondent to Nikisoni when he gave him the \$100. Nikisoni said that the accused said,

“Use that for something for the kids and remember me at the election.”

The respondent said that what he said to Nikisoni was,

“Use that for something for the kids, it has nothing to do with the election.”

[86] If what the respondent said was what Nikisoni has said, then there can be no doubt that the \$100 was given to him to induce him to vote for the respondent. If what the respondent said was what he said that he said to Nikisoni, I still have to consider whether or not his words “it has nothing to do with the election” made his gift “innocent”.

[87] Mrs. Tupou has submitted that the respondent’s version of what happened and what he said to Nikisoni is the more probable, as opposed to what Nikisoni said happened. She put her arguments like this and I quote:

“(i) There is evidence that Tatafu did not know that Niki was a registered voter at TT4 as it was known to him that Niki was residing within the TT3 electoral boundaries at Halaleva. In light of that, how could he request Niki to remember him in the election when he did not know Niki was voting in TT4? It is an absurd claim.

- (ii) When they were talking, Niki admits that Tatafu asked him about his family and he told him he was married and had children. This is consistent with giving of the money for his children.
- (iii) Niki deposed that he was puzzled and felt guilty about the money and the favour. Under cross-examination he said that the conversation inside the club was happy as Tatafu was teasing him reminiscing about the time they were growing up and he further agreed he was happy when they were talking outside and was happy when Tatafu gave him the money.
- (iv) Despite Niki trying to distance their relationship and denying he had knowledge of their blood ties, he did not deny the family tree and that Uatau on the tree was his mother. Kinikinilau Moeaki, whose mother is Niki's mother's sibling as well as Tatafu confirmed that the family tree as correct.
- (v) Tatafu gave further evidence of their connection when Niki's father died on or around 25th March, 2022 and Niki's elder brother Fanua sought his help to transport their father to the hospital. Tatafu wound up paying (without complaint) for the mortuary freezer chamber and arranging him to be kept at the Mosimosi club at the request of Niki's family."

[88] She also pointed out that there were inconsistencies between Nikisoni's affidavit and what was stated in the petition he had done. She said that in the petition the order of events was that

- (a) Nikisoni went outside for a smoke and Tatafu came out to take the bathroom.
- (b) Nikisoni and Tatafu spoke and Tatafu pulled out the money and gave him \$100 and then proceeded to the bathroom.

But that in his affidavit, Nikisoni said:

- (a) He went outside for a smoke and was approached by Tatafu as he was to use the bathroom.
- (b) They spoke and then Tatafu pulled out the money and gave him \$100 and then Tatafu went back into the club and he followed after his smoke.

[89] She also pointed out that when cross-examined, Nikisoni said that the visit by Tatafu to the club was unannounced whereas later on when re-examined by Mr. 'Etika, he said that the kava drinking was to receive (welcome) Tatafu and his team.

[90] She therefore submitted that because of Nikisoni's inconsistent and contradictory evidence, his evidence as to what he said that Tatafu said on giving him the money was unreliable and should be disregarded, and that Tatafu's evidence as to what he said he did say to Nikisoni be accepted as what was said.

Consideration

[91] I have considered Mrs. Tupou's submissions and I have also considered all the evidence which have been given in respect of this issue and I have found that Nikisoni's evidence is the more probable. Whereas Tatafu's evidence was generalised and verbose with explanations of justifications, when he described what happened that night in his affidavit, Nikisoni was specific about it in his affidavit. He stated as follows:

- "8. At one stage I went outside for a smoke and was approached by the respondent as he was to use the bathroom which is a separate unit from the club house.
- 9. We greeted each other and he told me he visited the people at 'Amanaki Fo'ou kava club and no one seems to want to talk to him. I told him to continue on with his strategy courageously and disregard what happened.

10. He asked me where do I vote and I said Tongatapu 4, then he asked me again who will I vote for and I told him I am not sure yet.
- 10A. He then reached into his pocket and pulled out a bundle of pa'anga notes from which he picked out one bill and gave it to me and said, take this and buy something for your kids and do remember me on the poll.
- ...
15. When the respondent pulled out the bundle of notes from his pocket, I saw that it contained 100 pa'anga bills, about an inch thick, pink in colour and from it pulled out one bill from it.
- ... "

[92] In response to that, Tatafu said in his affidavit:

- "41. On this material night, I met Niki at the Tu'ilevatai club, I say it was most probably the 14th October 2021.
42. I was happy to see Niki and from what I could see he was also happy to see me. This was the first time I had met him since my appointment to a Ministerial portfolio. We met inside the bathroom and came out talking, happy to meet up that night. The incident must be understood from this context.
43. I had donated money inside the kava circle but knew that I had about \$170 or so in my wallet. So I gave Niki the \$100 because I was happy to see him after such a long time. I recall telling him to buy something for his kids and that it had "nothing to do with the election" because I was very wary that such allegations could easily be made by any bystander although I knew that Niki was living within the Tongatapu 3 constituency.

44. Niki was happy and took the money and he said and showed nothing to indicate that he was accepting the money for any reason other than a charitable donation from a friend and that it was a happy reunion.

... **Response to Niki's Affidavit**

61. Paragraphs 7 – 10 are denied except that I did meet him inside the bathroom and we came out talking to each other and I gave him \$100 and (told him to buy something for his kids and to know it had nothing to do with the election). I did not approach Nikisoni as alleged in paragraph 8 of the affidavit, but met him inside the bathroom by probable circumstances of the evening. The context relative to these facts against the affidavit statements by Nikisoni Tomasi are important to confirm by the Court.”

[93] In his oral evidence in chief in Court, he gave no detail of what they had talked about.

[94] During his evidence, he said that he did not know that Nikisoni was an elector of Tongatapu 4 because he knew that Nikisoni lived in Halaleva which was in Tongatapu 3, and he denied that he had asked Nikisoni where he was voting. If he had thought that Nikisoni was an elector in Tongatapu 3 and that he would not be voting in Tongatapu 4 where he was a candidate, there was no need for him to have told Nikisoni that the giving of the \$100 had nothing to do with the election. And to fore-stall any question about that point, he said that he had said that to Nikisoni in case any by-stander would misinterpret the gift of the \$100. I ask myself, what by-stander? He had not said that there was any by-stander.

[95] On the other hand, the words make perfect sense when put in the context which Nikisoni described in the paragraphs of his affidavit. There were only the two of them outside and out of sight and hearing of anyone, and the respondent had just found out that Nikisoni was an elector of Tongatapu 4.

- [96] And if the respondent's words "and it has nothing to do with the election" are to be accepted as what he in fact said, they make no sense because Nikisoni did not need to be reminded of it because, as the respondent understood at that time, Nikisoni was not an elector in Tongatapu 4 where the respondent was a candidate.
- [97] I also consider that it is significant that when Kinikinilau went and pressured Nikisoni (not to give evidence at this trial) on 22 and 23 December 2021, he did not say to Nikisoni anything to the effect that he had lied or he had been mistaken as to what he said that Tatafu had said when he gave him the \$100. Tatafu would have told Kinikinilau what the petition alleged that he had said to Nikisoni when he gave him the \$100. Tatafu would have told Kinikinilau that the allegation was false or was mistaken, if the statement was false or was mistaken. The absence of any statement by Kinikinilau to Nikisoni to that effect on 22 and 23 December 2021 and in his evidence in Court during this trial is consistent with the fact that the respondent did say the words which Nikisoni has said he said.
- [98] I also find that Nikisoni's refusal to give in to Kinikinilau's proposals that he did not give evidence was consistent with the truth of his evidence which he has given in this trial.
- [99] Mrs. Tupou submitted that if Nikisoni was correct in his evidence and that he persisted in maintaining the truth of his story, he ought to have reported the matter to the petitioner right away. She said that Nikisoni instead used the money for purchase of food for his young child.
- [100] I do not agree. I refer to comments of Ward CJ in *Haomae v Bartlett* [1988 - 1989] SILR 35:

"In an election, any candidate will be subject to customary pressures to make gifts which he will feel he is obliged to observe. However, the giving of money is always likely to be misconstrued. In this case the sum was not large but, in the context of an old

village man who had little other access to cash, its effect could be substantial.”

[101] In this incident, Nikisoni was only a security worker at the hospital and a gift of \$100 was substantial. The fact that he did not refuse the gift and did not complain about it at the time does not mean that it is less likely that such gift was given to induce him to vote for the respondent.

[102] I have also listened carefully to their evidence and I find that Nikisoni answers the questions put to him easily without hesitation or without attempting to justify anything. In fact, he properly and promptly admitted that he had done wrong in accepting the money, and in failing to report the matter to anyone.

[103] I find that his evidence of feeling guilty after accepting the money which was given with the message “remember me at the election” was consistent with the feeling of guilt which the witness Kika Melekiola felt. She was the witness in the case of Latu *Silivenusi v Lavulavu* (CV90/2014). She said that Mr. Lavulavu just came to her house (without being invited) whilst she was weaving on her veranda and threw \$50 to her for refreshments and invited her to the prize giving that evening. She said that she felt burdened by the gift as the only reason for the gift was because of the election and she did not want the money because she had not decided who to vote for. She did not take the money. It was left for some children who were playing in the background (Refer para. 34 – 36 of the judgement of Paulsen LCJ). The Court found her evidence convincing although she was mistaken in some respects of her evidence (para. 71). Similarly, I have found Nikisoni’s evidence convincing, despite the inconsistencies referred to by Mrs. Tupou, because I accept that he felt guilty (burdened) for having accepted a gift with a string, that he vote for the respondent, when he had always voted for the petitioner.

[104] I also note that the respondent made no mention in his evidence when he gave the \$100 to the “tou’a” at the kava circle that he had said to the girl,

“that has nothing to do with the election”. I consider that if he had said those words to Nikisoni whilst only two of them were outside in case some bystander may not misinterpret the gift he gave, then surely he would have said the same thing when he gave the \$100 to the “tou’a” because there were some 20 or so people there who saw him give the girl the money. But he did not say that he said the words to the girl.

[105] I believe that he did not say those words to the girl or to any of all the other 49 or so girls in the 50 or so kava circles he visited during his election campaign, and the reason is because he would have been laughed at if he did, because the people would have thought that it was a joke. And they would be right. You do not give a female tou’a a large sum of \$100 and tell her not to think of it as an inducement for her to vote for him because it plainly is. That is why he would not have said the words then.

[106] So why would the respondent say the words instead to Nikisoni when there were only the two of them were there outside the club house? The answer is what Nikisoni gave in his evidence. Because there were only the two of them there, the respondent said to him, on giving him the \$100, “Remember me at the election”.

[107] Those are the reasons why I have therefore come to the conclusion that the words which the respondent said to Nikisoni were:

“Use that for something for the kids and remember me at the election.”

[108] Those words mean that the \$100 which accompanied them was intended to induce Nikisoni to vote for the respondent at the election.

Was Nikisoni an elector?

[109] Mrs. Tupou submits that the name Nikisoni Tomasi does not appear in the roll of electors at all, so he is not “any elector” for the purpose of S.21 (a) of the Act.

[110] She further submits that the name Nikisoni Tomasi does not appear in the roll of electors at all, so he is not "any elector" for the purpose of S.21 (a) of the Act.

[111] I do not agree. The Electoral Roll not only registers the elector with a particular number, as well as his/her particular number in the village, that is, no.186 for the 'Anana village, for Soane Niki Tomasi, it also has a particular personal ID number.

[112] In this particular case, the ID number of Sone Niki Tomasi is the ID number of Nikisoni Tomasi and that is confirmed in P.20 which includes the photograph and the signature of Nikisoni Tomasi as of 18 June 2010, the date of his registration as an elector. That photograph and that signature were not disputed by the respondent as not being those of Nikisoni Tomasi. It is clear that the date of birth 23 November 1971 had been entered in error and that it had been accepted by the electoral officers that that was so because they had allowed Nikisoni Tomasi, with birth name Soane Niki Tomasi and birth certificate birth date of 23 March 1971, to vote at all the elections in which he said that he voted. I accept his evidence that he has voted some 5 times since the 10 constituencies for Tongatapu were created in 2010, for which he said he was duly registered in 2010.

[113] I therefore conclude that Nikisoni was an elector for the purpose of S.21 (a) of the Act.

Was the gift of \$100 exempted under S.24 (3)?

[114] Mrs. Tupou submitted that the family tree produced as P.100 in the Respondent's production was agreed by Nikisoni and it showed that the respondent's mother, Nita, was a third cousin of Nikisoni. She says that that made the gift of \$100 which Tatafu gave to Nikisoni an expense that falls within S.24 (3) of the Act and was therefore an exception under S.21 (3) of the Act.

[115] That is not correct. S.24 (3) does not include 3rd cousins or even 1st and 2nd cousins in its provisions. What it provides is as follows:

(3) For the purposes of this section, any sum expended by a candidate for his personal expenses, or those relating to his spouse, parents, grandparents, grandchildren, the brothers and sisters and half brothers and half sisters or their children, or the brothers and sisters and half brothers or half sisters of his spouse or their children, or in relation to a church or for a charitable purpose, shall be disregarded.

[116] Nikisoni is none of those specified relatives of Tatafu, or of his spouse. Therefore, the \$100 which Tatafu gave Nikisoni was not an exception under S.21 (3) of the Act which provides as follows:

“(3) For the purposes of this section, any money or valuable gift given or offered or agreed to be given (in the absence of good consideration) to any person (except a person named in S.24 (3)) within 3 months of any election by or on behalf of any candidate, shall be deemed to have been given or offered or agreed to be given for the purpose of influencing the vote, unless the contrary be proved.”

Was the gift out of character?

[117] Mrs. Tupou submitted that Tatafu has established that giving to family and friends, as well as charitable causes for church, schools and clubs he was involved with was not out of character for him.

[118] That may be so, but with regard to his gift of \$100 to Nikisoni it was out of character because he accompanied his gift with the words: “Remember me at the election”.

Conclusion

[119] I have therefore come to the conclusion that the first claim of the petitioner against the respondent has been proved. I consider that the

petitioner has proved, and I am satisfied on the balance of probability, that the respondent gave \$100 to Nikisoni Tomasi, who was an elector of Tongatapu 4 in which the respondent was a candidate for the general election which was to be held on 18 November 2021, to induce Nikisoni Tomasi to vote for him.

[120] Accordingly I find that the respondent has committed the offence of bribery under S.21 (1) (a) of the Electoral Act.

Promises to procure loans

[121] I proceed to the second claim of the petitioner. He says that the respondent committed bribery by making promises to procure loans for a group of female electors at Patangata to induce them to vote for him at the same election, 18 November 2021.

[122] The evidence for the petitioner for this claim were given by 2 witnesses, 'Ofa Maka and Naitingikeili Mafi, who made affidavits of their evidence and they also gave oral evidence in this trial.

[123] **'Ofa Maka**, 54 years old of Patangata, a female elector, said that one, Hua Latu, the wife of the town officer of Siesia, invited her and other women to meet with the respondent because he had promised that if they supported him (at the election), he would pay off all loans which women had taken from SPBD Finance and any other loan in respect of which any security was being held.

[124] She said she went to the meeting but the respondent was held up at another meeting and that he only spoke to them by speaker phone. She said that the respondent told them that he could arrange with Government to settle any loan with SPBD or with any other person with whom any security was held and that they repay Government with only 1% interest on their loans from Government.

[125] She said that Hua Latu then shouted to them to support the respondent so that he could help them out with their loans.

- [126] She said that they dispersed and that they filled the forms up but that Hua Latu told them that the respondent said to wait. She said that they have so waited up to now.
- [127] **When cross-examined by Mrs. Tupou**, she said no forms were filled in at the meeting because there were no forms there. She agreed that the loans to be arranged would be for 2 years at 1% interest per annum and that they had to apply on forms. She said that the respondent told them that he would clear all their loans and that they would only pay for the Government loans.
- [128] She said that they did not go and see the respondent afterwards and that they did not go and fill in the forms.
- [129] **I asked** and she said that what she understood was that what the respondent said was that he would pay off their loans and then they would apply to Government for new loans at 1% interest.
- [130] **Mrs. Tupou again asked** and she said that she did not make use of that promise of the respondent because they had to have a group which would be all agreed before they could go to get their loans.
- [131] **Naitingikeili Mafi**, 56 years old, of Patangata, said that the purpose of the meeting as conveyed by Hua Latu was for the respondent to explain to them about the possibility of a quick payoff of their loans at SPBD Finance and getting a low interest loan from Government.
- [132] She said that her phone was used as the speaker phone and that the respondent explained that he would arrange with Government to settle the loans from SPBD Finance or other loans with securities and give them low interest loan from Treasury.
- [133] She said that he told them that he would assist them to get their loans from Treasury and that they had to provide their IDs and dates of birth and to fill in the loan application forms distributed at the meeting.

- [134] She said that he told them that when they had completed the forms, they were to be given to him to sign and then they would take them to the Treasury and draw out their loan amounts.
- [135] She said that there then followed heated discussions between 'Ofa Maka and Hua Latu because 'Ofa accused Hua of supporting the respondent and getting them, the women, to vote for him at the election and that the promises he made would not come to anything. She said that that ended the meeting without any confirmation from the respondent about when their loans from Treasury would be approved to settle their existing loans.
- [136] She said that since their meeting no loan had been approved and they asked Hua but she kept saying that they were still being arranged by the respondent with Government.
- [137] **When cross-examined by Mrs. Tupou**, she said that no forms were given out at the meeting. She said that the respondent said that he would help them get their loans and that forms were to be filled in and were to be given to him at the Treasury. She said that he said he would put in their loans for them and that he would get their loans for them.
- [138] She said that the respondent never said that he would pay off their existing loans for them.
- [139] She said that she wanted to get a loan herself but the respondent said that they had to be in groups so that the loans would be processed quickly. She said that they then agreed to be in groups but she did not join any group.
- [140] She said that the respondent did not say for them to vote for him. She said it was Hua who told them to.
- [141] **I asked** and she said that her group was for persons who made or concentrate on kitchen things and another group was for tapa making.

[142] She said that at the end of the meeting, they agreed that their leader, Siu Nonu, and 'Ofa Maka, would go and put in their applications to Treasury.

[143] **Mr. 'Etika asked** and she said that what they agreed was that Siu Nonu would take their IDs to the respondent.

[144] **Mrs. Tupou asked** and she said that she could try and get a copy of their papers because they did not have any paper with them. She said they have not had any reply to their application up to now.

[145] I directed the witness to bring the papers, if she could get a copy of them, to the clerk of the Court the following day. No papers were received by the clerk from them up to now.

Petitioner submissions

[146] Mr. 'Etika for the petitioner has submitted that the evidence of 'Ofa Maka and Naitingikeili Mafi were clear, consistent and concise on what they recollected that the respondent told them via the speaker phone and by Hua on his behalf at the meeting, and that he told them that with the intention to induce them to vote for the respondent. He says that the action of the respondent amounted to bribery in accordance with S.21 (2) of the Act.

Consideration

[147] I do not agree. I have found that both their evidence were inconsistent and conflicting.

They are so confusing that I cannot be sure what it is that they are saying. I cannot discern what I can say were or are the facts. For example:

(a) Para. 126 above : 'Ofa Maka said that they dispersed and that they filled the forms up but that Hua Latu told them that the respondent said to wait and that they have so waited up to now.

Para. 128 : She said that they did not go and see the respondent afterwards and that they did not fill in the forms.

(b) Para. 135 : Naitingikeili Mafi said that there then followed heated discussion ... and that that ended the meeting without any confirmation from the respondent about when their loans from Treasury would be approved to settle their existing loans.

Para. 139 : She said that the respondent said he would help them get their loans and that forms were to be filled in and given to him at the Treasury.

Para. 142 : She said that at the end of the meeting, they agreed that their leader Siu Nonu and 'Ofa Maka would go and put in their applications to Treasury.

Para. 143 : She said that what they agreed was that Siu Nonu would take their IDs to the respondent.

[148] But more importantly, what I gather from the evidence is that the respondent told the women that if they gave him their applications, he would put them in to Treasury and help them to get their loans. I find no evidence that he promised that he would **procure** their loans for them. I am not satisfied that he promised that he would.

[149] I therefore find that the petitioner has not proved, on the balance of probability, that the respondent promised to procure loans for the group of female electors of Patangata to induce them to vote for him, and I dismiss that claim of the petitioner.

Promise of free water tanks

[150] I now proceed to the third and remaining claim of the petitioner. He claims that the respondent committed bribery by making promises through

another person to give free plastic water tanks to electors of Patangata to induce them to vote for him. He called only one witness, Tepola Koula, in respect of it.

[151] **Tepola Koula**, 53 years old of Patangata, said that she was an elector of Patangata for many general elections and that she was a well-known supporter of the petitioner, and that another woman, Hua Latu was a well-known supporter of the respondent.

[152] She said that in October 2021, Hua Latu came to her and asked her if she wanted a water tank and she said yes, and that some days later Hua Latu came and said that a water would be delivered to her as a donation from the respondent. She said that several days after that, Hua Latu came and told her that a water tank would be delivered to her on the Friday of the following week, and that she would let her know who to vote for at the election.

[153] She said that no tank was delivered on the specified Friday and that Hua Latu came later and gave her a variety of dry foods and told her that they were donated by a sister of the respondent.

[154] She said that that was close to election day and no tank was ever delivered to her and Hua Latu never came and saw her again.

[155] **When cross-examined by Mrs. Tupou**, she said that she voted for the petitioner at the election. She said that she went to a barbeque at the petitioner's home about a week after the election and that was when she told him about what happened.

[156] She said that Hua Latu had not come and offered her any help before. She said that the food that she brought were 2 plastic bags of grocery. She said that Hua told her she would get a tank and it was gift from the respondent.

[157] She said she had lived in Patangata for 17 or 18 years and that she had never had a water tank. She said that the 2 plastic bags had crackers,

sugar, etc, and that one bag was for herself and that the other was for her husband, who was present when the 2 bags were delivered to them. She said Hua did not say that the bags of groceries were from the Catholic Church. She said she could not recall when it was.

[158] **I asked** and she said that they did prepare a stand for the tank and that that stand was still there up to now.

[159] **Tatafu Moeaki**, the respondent, said that he did not know Tepola Koula and that he did not know about any offer and he did not authorise Hua Latu to make any offer of donation of a water tank to Tepola Koula or to any person.

[160] He said his sisters had not donated any dried foods to anyone for his campaign.

[161] **When cross-examined by Mr. 'Etika**, he said that he did not authorise Hua Latu to do anything although he knew she was a supporter of him. He said that he did not ask Hua Latu to give him the names of people who wanted water tanks.

[162] He was then referred to the affidavit of Hua Latu, paragraph 31, on page 65 of the respondent's production, in which she said:

"31. In response to paragraphe 12 (of Naitingikeili Mafi's affidavit), again I did not make any promises on behalf of Tatafu nor did Tatafu make any promises himself. As for the water tanks, I recall that at one of Tatafu's rallies at Patangata, a lady got up and requested water tanks to needy families. Tatafu in response said at the meeting that a request has to be made to the Government as that is their project. He said that he had no money of his own to fund water tanks but can ask Government to help. Tatafu later asked me to provide him with a list of those in dire need for the water tanks to make the request for help to the Government. I provided the list

which included Tepola Koula and he said to leave it with him to make the request to Government for their assistance in this ...”

The respondent said that he agreed with it, that he did instruct Hua Latu to provide him with such list.

[163] **Hua Latu**, 63 years of age, of Patangata/Siesia, said that Tepola was lying when she said that she had told her that a water tank would be delivered to her as a gift from Tatafu, or that it would be delivered on the Friday of the following week and that she would tell her who to vote for.

[164] She said that she told her that she was compiling a list to be given to Government to request their help. She said that she gave that list to Tatafu and that Tatafu told her he would request Government for its help.

[165] She also said that Tepola was lying when she said that she told her that Tatafu’s sister had sent them.

[166] **When cross-examined by Mr. 'Etika**, she said that she did prepare a list of the people requesting water tanks and that that was the only task that Tatafu requested of her.

[167] She said she did tell Tepola to prepare her stand for her water tank.

[168] **When re-examined by Mrs. Tupou**, she said that the tank stand was a requirement of the department and that she told Tepola to prepare her stand. She said that she knew that the department required that so that a tank was given. She said that she did not talk to the Minister of the department about it. She said that she only told the people that because it was a requirement of the department and she knew that the tanks came from the department.

[169] **I asked her** and she said that she did not tell anyone else to prepare a stand and that it was only Tepola that she told to prepare her stand. She said that she had not told Tepola how big the tank was.

[170] **Mr. 'Etika again asked** and she said that she did not know for sure if any tank would be delivered and that was why she did not tell them to prepare their stands.

Submissions

[171] Mrs. Tupou submitted that there were 3 issues to this claim:

- (a) Did Tatafu indirectly promise a valuable gift?
- (b) Were those to whom the promise was made electors?
- (c) Was the promise of the valuable gift to influence the vote?

Indirect promise?

[172] Mrs. Tupou submitted that the alleged bribery claimed by the petitioner is that Tatafu was conducting field surveys through his campaign leaders of the resident electors of Patangata who needed water tanks and distributing free plastic water tanks. She said that it is denied that conducting a field is a valuable gift and that no evidence has been provided that it is a valuable gift.

[173] She further said that there is no evidence that any of Tatafu's authorised campaign leaders conducted a field survey of resident electors of Patangata who needed water tanks. She said that the only evidence is that Hua made a list which included Tepola's name.

[174] She said that both Tatafu and Hua said that Hua was not an authorised campaign leader in his team.

[175] She said that the onus is on the petitioner to produce evidence that Hua's actions were authorised or endorsed by Tatafu. She said that no such evidence has been produced and therefore this part of the claim failed.

[176] She said that the next part was whether Tatafu promised delivery of water tanks. She said that Tatafu has confirmed in his evidence that he had not made any such promise and that he had not authorised Hua to make any

such promise on his behalf. She said that Tatafu had not authorised her to make any such promise and that she had not made any such promise on his behalf.

[177] She also said that both Tatafu and Tepola have denied in their evidence that the dried foods given to Tepola had been given by Tatafu's sister.

[178] She also said that Tatafu had not authorised Hua to instruct Tepola to prepare her stand for the water tank and that Hua has confirmed that in her evidence.

[179] She therefore submitted that Tatafu did not directly or indirectly make any promise to deliver any water tank to anyone.

Were the promisees electors?

[180] She admitted that Tepola Koula was an elector at Tongatapu 4 but that it is denied that any promise was made to her by or on behalf of Tatafu.

Was the promise intended to influence the vote?

[181] She submitted that neither Tatafu nor Hua told Tepola who to vote for and Tepola has said that she voted for Mateni (the petitioner) anyway. She said that whatever Hua had said and done, it had not affected Tepola's vote.

[182] She therefore submitted that this third claim of the petitioner has failed and be dismissed.

[183] **Mr. 'Etika's submission** was that Tepola's evidence of the events was more probable because he said that Hua's evidence was evasive, and that the denials she made were not consistent with her actions as a strong supporter of Tatafu.

[184] He submitted that Hua did hold out that water tanks would be provided to residents of Patangata by courtesy of Tatafu.

Consideration

- [185] Having considered all the evidence and the submissions in respect of this third claim of the petitioner, I have come to the conclusion that I am satisfied on balance of probability that the respondent did indirectly, through Hua Latu, promise to give free plastic water tanks to electors of Patangata to induce them vote for him.
- [186] Tatafu (the respondent) did instruct Hua, a strong supporter of his, to list all the persons who wanted water tanks in Patangata and to give him that list. The process of the preparation of that list would be that Hua would meet the people of Patangata personally, privately, and explain that he, Tatafu, wanted the list of the people who wanted water tanks, so that he would procure the tanks for them and have them delivered to them. She would tell them that the tanks would be sure to be delivered and that she would tell them to prepare the stands for the tanks in advance so that there would be no delay in delivering the tanks to them.
- [187] That is the probable and plausible explanation as to why Hua told Tepola to prepare her stand in advance. Why else would Hua tell Tepola that? No explanation was given by her. She could not give any other plausible explanation than what I have stated.
- [188] I ask myself: why would Hua tell only Tepola, and not any other person she had listed in the list she compiled, to prepare her stand? Again, Hua did not explain, and she didn't because she couldn't. And the reason is because it is not true. She would have in fact told everyone listed on the list to prepare his or her tank stand as well.
- [189] Tatafu has stated that he instructed Hua to go out and find out who in Patangata wanted a water tank and to make a list of those people. He told her that he would try and get those people the water tanks they wanted. Both Tatafu and Hua knew that all those people might consider that Tatafu was helpful to them and they might vote for him.

[190] Hua in carrying out Tatafu's instructions was thereby representing Tatafu to the people of Patangata. She was his agent for that purpose.

[191] In executing that purpose, Hua told Tepola, and I believe the evidence of Tepola, that the free water tank that would be delivered to her was a gift from Tatafu, to ensure that Tepola would consider that Tatafu was helpful to her and would vote for Tatafu.

[192] And why would Hua tell only Tepola that and not everyone else she listed? Of course she would tell everyone she listed. That was the idea and the purpose of the compiling of the list.

[193] And why was no tank delivered to Tepola? We do not know because neither Tatafu nor Hua told us. Neither of them told us if anyone on the list had been delivered any tank, and Tatafu never said what happened to the list which Hua said she gave to Tatafu.

[194] Accordingly, I find that Tepola's evidence is the more probable and is the more convincing whereas Tatafu's and Hua's are not.

Conclusion

[195] I therefore find that the third claim of the petitioner against the respondent has been proved, and I am satisfied on the balance of probability that the respondent committed bribery by making promises through another person to give plastic water tank to electors of Patangata to induce them to vote for him.

[196] Accordingly, I find that that the respondent has committed the offence of bribery under S. 21 (1) (a) and S.21 (2) of the Electoral Act.

Result

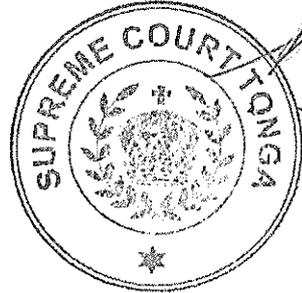
[197] Because it has been proved to the satisfaction of this Court at the trial of this election petition of the petitioner, Mateni Tapueluelu, against the respondent, Tatafu Moeaki, that the respondent, Tatafu Moeaki is guilty of two offences of bribery under section 21 of the Electoral Act, and in

pursuance of the provisions of section 32 of that Act, this Court declares that the election of Tatafu Moeaki as the representative for the Tongatapu 4 Constituency is void.

Costs

[198] In view of the partial success of the respondent in 3 of the 5 claims against him, and because each claim involved a different amount of work, and bearing in mind S.39 of the Electoral Act, I direct each counsel to file memoranda within 14 days as to any proposed percentage of costs to be awarded to each party, and unless a counsel requests a rehearing, I shall issue my decision as to cost on those memoranda.

NUKU'ALOFA: 06 May 2022.



[Handwritten Signature]
Niu J
JUDGE