

4. During the course of the trial Counsel for the respondent was asked to confirm whether the transcripts for the 5 video clip exhibits were agreed.
5. The only point he took was with the with transcript, exhibit 2 (b), was the translation of the word “tokoni”.
6. It was therefore directed that the stated word would remain in the original Tongan language.

The first allegation of bribery

Tapinga Lavemaau

7. On 1st October 2021 there was, at Houmaniutao, an event to showcase the handicrafts of the Women’s Association of Tongatapu 10 (“the Niutao event”).
8. Guests included Dr. Tu’i’onetoa, the then Prime Minister and Minister for Public Enterprises and leader of the Paati ‘a e Kakai; the People’s Party, and also Minister for Finance Mr. Tevita Lavemaau.
9. Mr. Tapinga Lavemaau at that time was a journalist for channel 87.5 FM. He explained the Niutao event ran from 1st to 2nd October 2021. It was his professional Facebook page that streamed the event.
10. He identified clip 1; “Video 1 -Niutao PM Speech.mp4” as a segment of the Niutao event the company he worked for broadcast. That MP4 file became exhibit 1 (a) 43 mins 15 seconds to 57 min and 00 seconds the relevant section.
11. The transcript for the that section being exhibit 1 (b).
12. Likewise, Mr. Tapinga Lavemaau identified “Video 2 -Niutao MOF Speech.mp4” as the Minister for Finance’s speech at that event; 10 mins 51st second to 12 min 40th second; exhibit 2 (a) its transcript was also produced; exhibit 2 (b).

Katalina Tohi

13. She is the manager of 87.5 FM and has been with the company for over 13 years. She did not know the precise date last year of the interview we are concerned with, there having been many programs with Dr. Tu’i’onetoa.

14. She identified and produced "Video 3 – Campaign Launch.MP4" as exhibit 3 (a); the transcript became exhibit 3 (b).
15. The relevant portion of the video is at 59 minutes, 20 seconds to 1 hour, 12 minutes and 27 seconds.
16. Likewise, she identified "Video 4 – Opening of Afa Wharf.MP4" which became exhibit 4 (a), the transcript 4 (b).
17. The relevant section is at 43 minutes 25 seconds to 51 minutes 20 seconds.
18. And finally "Video 5 – PM Interview on FM 87.5.MP4", became exhibit 5 (a), the transcript 5 (b).
19. The specific portion being at 5 minutes 18 seconds to 7 minutes 10 seconds.
20. Miss Tohi confirmed in cross-examination that while there were retained audio recordings and video footage, her company did not have any transcripts.

Kelekolio Taniela Kiu

21. He is the petitioner. A farmer by profession who has worked for the Talasiu police, been the Town Officer from 2010 to 2016 and was a registered voter in Tongatapu 10.
22. Under cross-examination he explained that he was suing the respondent on his own. This was for what he believed to be wrong doing. One such example was the opening of the wharf at Afa. At the opening, Dr. Tu'i'onetoa had asked his audience that they remember him at the election the following week for his hard work bring the wharf to Afa.
23. Mr. Kiu believed this was simply buying votes and as such was an act of bribery.
24. Whether the wharf belonged to the Port's Authority or it was built with government money, Mr Kiu firmly believed that by bringing the wharf to his own constituency and then asking to be remembered in the next week's election at the opening, Dr. Tu'i'onetoa had ingratiated himself into the hearts of his constituents and wrongly asked for their support.
25. The second allegation of bribery is set out in his affidavit at paragraph 16. That is the tokoni of \$50,000 to the Women's Group of Tongatapu 10.

26. He explained that he had seen the video footage and also been told about the event. But he had not looked for any other basis to sue the respondent.
27. He said that taking into account the Niutao event, the opening of the wharf at 'Afa and their timings with the election in November looming, he felt that it all amounted to wrong doing.
28. Of paragraph 21 of his affidavit, that the giving of the \$50,000 was done on behalf of Dr. Tu'i'onetoa to influence voters, he stated that was so, even if the respondent claimed it was a fund or aid. He held the view that was wrong and it did not matter that this was done under the auspices of a donation for weaving or handicrafts.
29. It had been done to find favour with a large number of women from Tongatapu 10 who were at the event. It may lead to economic growth, but it needed to be done at the right time.
30. He had been unaware that the Minister for Finance had been invited, nor knew why he was. He did not think the money had ever been given.
31. It was suggested to the witness that the Women Committee to Tongatapu 10 had to comply with further requirements for that money to be paid.
32. The petitioner's allegation that the wharf construction had been speeded up was a matter reported to him from Tokomea 'Ofahulu; he had no direct knowledge of that. He had not mentioned his name at the time of the affidavit but the use of the words "became privy to" (paragraph 14) and "I am now privy to" (paragraph 21) made it clear that it was information reported to him.

Poini Paongo

33. She is employed at the Ministry for Trade and Economic Development. Her job includes registering Incorporated Societies.
34. One such organisation is the People's Party. It is an incorporated society with 35 members. Those include Dr. Tu'i'onetoa who is the president and Mr Tevita Lavemaau, who is secretary.
35. The People's Party has a constitution and stated aims.

Pisila 'Otunuku

36. She works as head of procurement for Ministry of Finance; been employed at that Ministry since 2014 and is currently the Acting CEO.
37. She confirmed that at the time we are concerned with there was no money set aside to fund the women in Tonga working on Handicrafts. She was not aware of any payment of \$50,000 TOP made for such purpose, or indeed any amount.
38. She had no discussion with the Minister of Finance concerning such a fund or payment. She knew there had been some correspondence from the Women of Tongatapu 10. But, the Ministry had not made any such payment. That was because there was no basis for a payment, there was no grant and no \$50,000 nor any money at all.
39. That was why no payment was made.
40. Cross-examined and she confirmed she had been head of procurement since 2014 and Acting CEO since last year, 2021.
41. There was no fund at all for that specific purpose. She could not recall if a Women's Group from Tongatapu 10 had submitted a plan.
42. She agreed that may have been because she was very busy with her other roles.

Langaola Kiu

43. She lives in Lapaha and is a registered voter of Tongatapu 10. She identified her affidavit and made a correction in respect of paragraph 14, stating the radio station in question should read 89.5 FM.
44. Cross-examined she explained her husband was an older brother of the petitioner, Mr. Kelekolio Kiu and she also lives in Talasiu. Her affidavit had been explained to her in Tongan, albeit she had sworn on the English language translation. It sets out her thoughts in her own words.
45. She had been a member of the Women's Group Tongatapu 10 for 10 to 20 years. Asked about her claim that she believed the announcement of \$50,000 pa'anga donation was the respondent and his Minister for Finance campaigning at the Niutao event, she stuck to this. She equated the giving of that money with the imminent election. The Prime

Minister's own Minister for Finance had made the announcement, but she saw the whole event that day as a vehicle for the Prime Minister's campaign and not really for the Women's Group at all.

46. Dr. Tu'i'onetoa had a large vehicle at the Niutao event with his banner prominently displayed. Seeing this she knew it was his campaigning. The event had, to her mind, been organised by him and then he had invited himself as guest of honour.
47. The Niutao event had been organised at a meeting in Lapaha and the Women's Committee of Tongatapu 10 were invited to participate.
48. In her view Dr. Tu'i'onetoa had organised the program. She justified this, explaining that the nature of the program, where he was the keynote speaker and the displaying of his banner, plus the giving of the money so close to the election all drove her to that view.
49. She understood the Minister of Finance's speech giving the money as being on the Prime Minister's behalf. She believed it was Dr. Tu'i'onetoa's idea to give the money. The respondent knew all about the giving of the money as it was being announced over loud speakers in his presence. His satisfaction at the announcement was clear.
50. In re-examination she said that in the 10-20 years of her membership of the Women's Committee of Tongatapu 10 there had never been such a gift made and she was quite clear in her own mind; this was political campaigning.

Vasiti Movete

51. She lives in Lapaha. She identified her affidavit, her signature therein and explained that it was her document that had been gone through with her in Tongan by Counsel.
52. In cross-examination she explained she is registered to vote in Tongatapu 9 but her interest in this matter stems from her being the president of a Weaving Group with members from both Tongatapu 9 and 10 which has been in existence for 2 years and she has been president of it for 10 months now.
53. Mele 'Amanaki from PSA was the general secretary and named other key members.

54. The last meeting was last month, but there was a certain amount of disruptions recently due to lockdowns. She did not know where the others all lived. They would contact one another by phone.
55. There had been two meetings last year and just the single meeting so far this year.
56. She was not a member of the Women's Group for Tongatapu 10.
57. She explained that she had been shocked at the announcement made by Mr. Lavemaau because she, as a member of her own separate group, had never experienced such help from Government.
58. When asked if she knew any such giving of money was contingent upon the submission of a plan, she explained that it had been described as a gift by the Minister of Finance and she had only recently become aware that the money had not been paid.
59. She does not know Mr. Kelekolio Kiu well.
60. Paragraph 10 of her affidavit asserts that she considered the Niutao event had been used by the respondent for campaigning, she explained it was because all the banners there that day were for Dr. Tu'i'onetoa as the People's Party representative for Tongatapu 10. The chairperson of the Tongatapu 10 group is a member of the Tongatapu 9 committee also.
61. She was told that she would be given an invitation but in the event only received a call on the day enquiring whether she was ready with their float.
62. She was told that it was a village event they were attending.
63. All she knew was that she and her committee had been invited because some of the women in her committee were also in the Tongatapu 10 committee, they were to participate with their floats.
64. She knew Dr. Tu'i'onetoa was at the event from his banners.
65. She stuck by her assertion that it was wrong of him to have used the event for political ends. She replied that she had two complaints (i) At the very entrance to the Niutao event was displayed one of his banners; and (ii) her committee had approached government for funds and been denied saying there was no money.

66. Her clear impression was that the giving of \$50,000 pa'anga had been agreed between the Prime Minister and Mr. Lavemaau.
67. She heard the announcement and saw Dr. Tu'i'onetoa clapping, when it was said.
68. In answer to the suggestion that everyone ought to be happy, she said that it was still wrong.
69. Initially after the announcement, she had hoped that her committee would also benefit, but then were being told, even before the show ended, they wouldn't.

Mele 'Amanaki

70. She lives in Tofoa and appeared at court pursuant to a witness summons. She is the secretary general for the Public Services Association (PSA). She is also the interim Secretary General for the Seven Sector Association that represent the interests of groups including Fisheries, Livestock, Handicrafts, Tapa making and Road-Side-Vendors.
71. She knows Dr. Tu'i'onetoa because when she was a child, he lived in her family home in Tonga.
72. She recalled the Niutao event in October 2021. The constituency 10 Women's Group had a trade show of handicrafts, Tapa and garments. She had been invited by the members.
73. They represented some of the Seven Sector Association, which she described as being under the aegis of a tripartite project under Ministry Trade and Economic Development, Tonga Chamber of Commerce and Industries as well as on behalf of Businesses and Employers.
74. The Seven Sector Association was started in reaction to the impact on businesses of the Covid 19 pandemic.
75. They had found that the majority of informal sectors in developing countries had been adversely effected, this included in Tonga.
76. The PSA assisted organising workers in the informal sectors. This included help to the Handicrafts sector.

77. Some of the Tongatapu constituencies had Women's groups for such sectors, others did not.
78. She compared them to overseas Trade Unions. The role of Handicrafts Association and the other related Associations was to give the members a voice in their relationship with government or other interested groups they needed to interact with.
79. The Niutao event took place 1st October 2021. Miss 'Amanaki had been invited and was sitting with guests at the front. In Video 1, exhibit 1, she can be seen sitting slightly behind and to Dr. Tu'i'onetoa's immediate left, at, for example, counter time 26 minutes 46 seconds.
80. She described it as a very happy day for the Tongatapu 10 institutes of handicrafts, Tapa and carving. Dr. Tu'i'onetoa was the guest of honour. The ladies had made displays. After the opening and prayers, Dr. Tu'i'onetoa made a speech.
81. She described it as a very good speech that encouraged the women to work hard for their income for their families. That he spoke of their good work and his feelings of concern for them. He dwelt on work he had done for them and spoke encouragingly. There were 1000 people or more there.
82. The former Minister of Finance then made a speech where he promised the women of Tongatapu 10 that the government would give them \$50,000 for their work.
83. Miss Amanaki said that as the interim secretary for handicrafts and Tapa and weaving she was happy for Tongatapu 10, but sad for the other 16 constituencies.
84. She had hoped the government would also give to all the women of the other constituencies. She believed what had been done was to do with campaign time and a view to encouraging his constituents to vote for him.
85. She herself had approached the government before September 2021; gone to the Minister for Trade, on behalf the Association for Handicrafts and Tapa and Weaving to request funding to assist all the people of Tonga in the handicrafts sector and had been explicitly told there was no money.

86. She described being sad and upset at the way it had been given out, because it was solely to his constituency and that was not good governance. Had it been a program to assist all the people involved in handicrafts for Tonga she would have been very happy.
87. She posted on Facebook on 4th October saying that she had hoped that the Prime Minister could give to other constituencies too so that it did not look like campaigning.
88. Her Association needed funds. They had planned a trade show and it needed financing for what she described as logistics and tents and enterprises. But she was told that there was no money and no program for the provision of such funds from government.
89. She was quite sure that it was a donation in the form of a gift to the Women's Committee Tongatapu 10, because the Minister for Finance said the cheque would be sent the following week.
90. Miss 'Amanaki was familiar with how the system of grants were administered. Before her role in PSA she had worked in government since 1992. She spent 5 years in the Ministry for Trade and Economic Development then 7 years in the Ministry Agriculture Forestry and Fisheries, making her knowledgeable in budgets and policies.
91. If there is a government grant then a program would normally be announced explaining who was eligible, allowing time for interested parties to write a proposal setting out how the funds would be used to achieve their stated aim. It usually took anywhere from 3-6 month, maybe even up to a year to get a grant.
92. There is no such thing as a grant where the cheque came the following week. This is what upset her; it was so plainly not a grant.
93. She knew how money was released from government funds. It would be done on the say of the person in charge and a procedure had to be followed. The funds had to be in the budget for that financial year, in this case 2021 – 2022; the program in question would need to be stated in it.
94. On behalf of the respondent it was put to Miss 'Amanaki that *'where a grant was made to a Women's organisation, a procedure had to be followed?'*. 'Yes', she answered, that was correct. The Ministry would have to publish the program of assistance for those interested to apply with their proposal and set out the requirements they met, then the applicants would be screened before any grant paid.

95. A recipient would have to establish its identity, for example the office holder and members of the committee, providing a work program and estimate of cost over the relevant period of time, that is the correct procedure.
96. In this case the Minister had clearly said the cheque would be paid the following week.
97. To her mind there being no such program according to the budget meant it could not be a grant.
98. She had indeed heard that the committee had requested the money and been told that a procedure had to be followed. The women reported to her that the Minister was not telling the truth.
99. Members of the Handicraft Association complained to her and she checked the budget. She told them there was nothing there, the Minister had obviously been lying.
100. As for whether his office explained that there was a procedure that had to be followed, that was irrelevant in the light of there being no such grant available.
101. On behalf of the respondent, Counsel stated there was evidence that the money was there yet they had to comply with the procedure.
102. Even though she was not a member of the organisation she knew they had not received the money.
103. Her organisation was set up with a constitution and had been submitted for registration with Ministry for Trade and Economics and she was responsible for registering her members.
104. Her being a witness was not because she represented any particular organisation but, she inferred, was because she had been present for the whole Niutao event.
105. In re-examination she explained that Mrs. Movete, a witness for the petitioner, had been one of the people to complain to her, tell her the Minister had lied and there was no such money.

The second allegation of bribery

'Alo Maileseni

106. He is the Chief Financial Officer, Treasurer and, since 2019, Acting CEO for the Ports Authority where he has worked for over 10 years.
107. The Ports Authority is a government enterprise acting under the Public Enterprise Act, responsible for Nuku'alofa marine ports.
108. The Ports Authority Act 1998 created restrictions as to the operating area of the Authority and its limits.
109. The role of the CEO was to oversee the running of the company and the of the controlling company.
110. S.10 of Ports Authority Act defines their responsibility as a business entity. Section 11 defines their duty and powers in running marine concerns in the Kingdom.
111. He is a member of the Board of Directors by virtue of being the CEO.
112. He recalled the Afa wharf project, it was carried out by his company. It came into existence on account of the Prime Minister's Small Island Wharf Development Project (SIWDP).
113. He identified a letter dated 6th October 2020, exhibit 6, which was sent by the Prime Minister himself requesting the Chairman of the Board of Ports Authority, Daniel Fale to commence works in relation to the 'Afa wharf including excavating the passage to the village of 'Afa and constructing a slip way.
114. The need for the wharf was already a high priority and government had already made requests that a number of islands have wharfs built.
115. Exhibit 7 are the Board meeting minutes for 9th October 2020 when this project was approved and the Acting CEO agreed to make reports on the progress of the project.
116. He understood that finances would come from a variety of sources including the communities.
117. The involvement of Ports Authority was, as he understood it, because they had the know-how and equipment to make it happen.

118. Exhibit 9 is a letter that Dr. Tu'i'onetoa, Minister for Public Enterprises, own Ministry sent to Daniel Fale, Chairman of Ports Authority, dated 31st March 2021, stating that Cabinet had approved the "Prime Minister's Small Island Wharves Development Project" and secured it funding of TOP \$ 1, 541, 445.00.
119. He identified the emails, exhibit 9, that set out that the legal advice was this project to build the 'Afa wharf was outside the remit of the Ports Authority and they had no legal standing at all to be involved.
120. The Solicitor General in an email of August 18th 2021 spelt out in the clearest terms that Ports Authority could only be involved in the project if there was a change in the law and the construction of the 'Afa wharf by Ports Authority, was, in his view, unlawful, because the Ports Authority had no remit in relation to the outer islands ports.
121. The construction of the Afa wharf started in September 2021. Shortly after the construction started he was told that the completion date was to be 2nd Week of November 2021. This information came from the Chairman of the Board but was clearly coming from the Prime Minister.
122. There were problems with construction, for example lack of cement and that prolonged it.
123. There were discussions regarding the delays because a lockdown also intervened. The workers were asked, but said that it could still be completed on time.
124. The communities also requested the project be delayed as they were important stake holders. This appears to have been because there was a shortage of funds they needed to contribute because of church offerings. The Free Wesleyan church were especially concerned and wanted to save money so as to more meaningfully contribute to the opening event.
125. Yet there was no change made to the opening date, those were the instructions they received.
126. During the last two weeks the workers had to work around the clock, morning and night. The instructions came from the Chairman of the Board, but Mr. Maileseni believed that it really was at the behest of the Prime Minister.

127. In cross-examination he agreed that the purpose of the wharf was to allow cross-island transport, an essential project for Tonga and the instructions he acted on came only from the Board.

Sosefina Naitoko

128. She is a registered voter of Tongatapu 10. She identified her affidavit and that she stood by it and did not wish to add or alter anything.

129. Therein she states that she was at the opening of the wharf. That she heard the Prime Minister's speech; that he had made the wharf's construction happen. He asked a favour and that they should vote for him because of this.

130. She thought this was not right.

131. In cross-examination she stated that she could not recall if he had asked for the construction to be completed, she only recalled he asked to be remembered on election day.

132. This witness struggled to answer the questions put to her. When asked about what was wrong with what the respondent had said at the opening, or why it was wrong for him to garner support as he had, she could not find an answer.

133. She merely stuck to her line; what the respondent had done was wrong.

134. In re-examination she stated that it was wrong because of the proximity to the election.

Lesieli 'Iongi

135. She identified her affidavit and that the signature on it was her and that she maintained what she had stated in it.

136. Cross-examined and she said she lived in Houma and was registered to vote in Tongatapu 4, which was clearly set out in the affidavit in the header and paragraph 2.

137. She also said that she sympathised with the respondent when he had asked for their votes at the opening of the wharf.

138. She stood by what she had said in paragraph 11; that had she been in his constituency, she would have voted for him. This was because of the construction of the wharf. Her

mother lives in Tongatapu 10 and the benefit to her was what was that impressive. She was happy with his request to vote for him. To her the wharf was an important development.

Tokomea 'Ofahulu

He identified his affidavit with his signature and that it represented his views.

139. Cross-examined, he explained what was already clearly set out in the affidavit, which was he was originally from Niutao, so the Tongatapu 10 constituency, but when he married he moved to be with his wife in Haveluloto, Tongatapu 2.

140. Of the complaints he made in his affidavit about the offering to give \$50,000 to only to the Women's Committee of Tongatapu 10 in October, also the opening of the 'Afa wharf, the following month, where Dr. Tu'i'onetoa then asked for votes in return for the completion of the project; he explained both were wrong was what he believed.

141. Mr. Ofahulu was then questioned at length about why he had not re-registered when he moved address.

142. He was asked why it was stated in his paragraph 13 he was surprised at the Prime Minister's request for votes. He explained he had never heard such a thing before. He stood by what he stated, that this was unfair. Other constituencies had not benefitted in this way.

143. **Close of petitioner's case**

Respondent's case

Dr. Pohiva Tu'i'onetoa

144. He identified his signed affidavit with appendix and that there was nothing he wished to correct.

145. Cross-examined he explained the various Ministerial posts he had held in the past, including Minister for Police and Minister for Finance. He was in that post for a little more than one year and prepared one budget.
146. His banner had been on display at the Niutao event on 1st October 2021 because that spot was his established spot for displaying his banner ever since he started running for parliament.
147. It had never crossed his mind to have it taken down when the women's show was going on there. His slogan could be translated as "Royal endeavour to build country to the best heart for eyes of Tonga"
148. The clip of the video, exhibit 2, that showed one of his election pamphlets in the hands of a guest at the Niutao event, 1st October, was indeed one of his. It had been handed out by children.
149. The speech he made acknowledged Ministers and Women and the election as well as it focusing on the importance of electing deserving candidates as members of parliament.
150. He talked about his role in the People's Party to ensure the people would know where he stood.
151. It was not mostly a political speech that failed to focus on women. All his efforts and energy he put towards the people. It was not a true part of his campaign.
152. The banner was at the entrance to the park because he is a patron of the women's group who help maintain the park.
153. He was not campaigning, but equally he had to let the people know the work he did. Assisting women was the right thing to do. That was why he was a patron.
154. In a sense everything he did was campaigning and all his work for the previous two years could be said to be campaigning because he had to get his message across and provide evidence of his achievements, this included the Niutao event.
155. Mr. Lavemaau was the Minister for Finance and he had acknowledged him in his that speech. He did not know that he was going to make a speech, it was spontaneous, there was nothing wrong with what he said. To his mind he was referring to a grant.

156. The word he used was 'tokoni' and grant can be referred to by many Tongan words. Government funds would not be released without the due requirements being complied with.
157. Mr. Lavemaau was not being misleading. It only took those present to come to the Finance office and all would be made clear. There was no such thing as just a pay out, but if they came to the Finance Office and everything was in order the money could be paid. They came twice to ask for a cheque and were explained it was a grant. This was not Mr. Lavemaau supporting his campaign.
158. That speech was then played (Exhibit 2, clock counter 10 minutes 51 seconds onwards). It was a happy event and he was referring to a grant. The Finance office had explained it all.
159. After he received the petition he called the Secretary to find out what had happened.
160. The speech at Lapaha on 28th October whilst it did indeed make reference to the money; that it was to be paid the following week; that gap of a month without payment was because the procedure had to be followed for there to be a payment.
161. He had no idea what Mr. Lavemaau was going to say, so he had no reason to discuss that speech with him. He was being spontaneous and showing his warmth.
162. He was always under the impression that they knew how a grant worked. If he wanted to buy their votes he would have insured, they got the money.
163. Had they approached him directly he would have been aware of any issues; of any misunderstanding. He did not simply let Mr. Lavemaau mislead the people. Silence on his part was not his endorsing what Mr. Lavemaau said.
164. It had to be a grant, by definition and he assumed that it had been paid. First he suspected that was not so, was when he was served the petition. Then he understood there had been a misunderstanding.
165. At the Lapaha event, he was there and so were these women, their Chairman and Treasurer, but no one approached him with any questions or at all concerning this money.

166. He referred to paragraph 8 of his affidavit. By definition it had to be a grant. When he was served the petition, it then came to mind, he called the Secretary to ask what had happened with their application for the money.
167. Turning to the allegation relating to 'Afa wharf; he agreed he asked for votes at the opening in his speech. The work he did was something the public could trust him about.
168. The Ports Authority had a single shareholder; the government. He represented Minister Public Enterprise and the request in the letter, exhibit 6, for the work came from him accordingly.
169. He was aware of the legal issues surrounding the project.
170. But, during his tenure in government there had been two cyclones and the wharves of the outer islands had been destroyed. He had visited them and examined what there was and so initiated this project for the small islands.
171. Only Ports Authority had the specialisation and equipment.
172. He did not know of the legal advisor Mr. Ralph Stephenson. The Ports Authority undertook the wharf project. Their role was to handle the work, so his government requested they carry it out. The financial dividends came back to government, so the cost could be deducted from the dividends Ports Authority received.
173. So his government got them to complete the project and they were paid for it.
174. For many years these wharfs had gone unbuilt, best thing they came up with was to have the responsibility transferred to Ports Authority and them do the work, along the way they could also collect any profit.
175. His attention was drawn to the comments he made on 13th November 2021 in the Broadcom broadcast when interviewed about the building and completion of the 'Afa wharf.
176. The date for its completion he said was arranged by the Ports Authority and the respective communities. He did not recall that he had ordered the completion date. He could not recall such instructions coming from him.

177. Yes, he had asked for the work to carry on through the curfew. Mr. Fale, Chairman of Ports Authority had said he could not contact the Minister for Police, said it was better if that request came from Dr. Tu'i'onetoa. The Town Officer came to him and he, Dr. Tu'i'onetoa, called until he was able to speak to the Minister of Police. That was what he was asked to do and he thought that was fair enough.
178. He did not recall there being lockdown from 2nd to 8th November 2021.
179. He was not sure under whose authority the wharf now was, it might be Ports Authority for all he knew.
180. In re-examination he explained that albeit when Mr. Lavemaau announced the \$50,000 he understood that meant those monies could be given to the women, he did not know before hand of that sum available for their assistance. The announcement was the first time he became aware of it.
181. As for the giving of a cheque the following week; that would only be on account of due processes being followed. The Minister of Finance could not simply announce the existence of a fund and then hand it out. He had never seen nor heard of such a thing in government.
182. The correct procedure included the names of those women being listed, their plan submitted and its evaluation alongside their application. Given he was once the Auditor General as well as one-time Minister for Finance he knew very well how these processes needed to work.
183. He rejected any suggestion this was a bribe on his behalf via Mr. Lavemaau to the women of Tongatapu 10, or at all. It was a grant, not a gift.
184. Naturally he clapped during Mr. Lavemaau 1st October speech (exhibit 2 and 2 (a)) he was happy at the announcement given there was the possibility of providing assistance to these women.

Milika Matavesi

185. She identified her signed affidavit and stated there was a correction she wished to make to it. That was to the part where she stated they had worked with effort to get the \$50,000¹, instead she wanted to make clear they had tried to get the money.
186. The money they had not received.
187. That day, on hearing the announcement she believed there was a tokoni of \$50,000 to the women of Tongatapu 10 as appreciation for the work they had done.
188. She knew there would be, what she described as pathways for getting these funds; it would take some effort on their part.
189. They went to the office and contacted the Minister for Finance. The lady in that department asked them why they had come. They were told the Minister was in 'Eua, campaigning. They then discussed with her the promise of the money and were told she would contact Mr. Lavemaau for them.
190. Mrs. Matavesi understood there were requirements they would have to fulfil. Indeed, a few days later she was contacted enquiring about the Trustees of their organisation and its members.
191. She well understood the need to fulfil such requirements even before they got there, as she is familiar with this process from overseas, though there are differences to the system in Tonga.
192. She provided the Ministry with details of their bank account, board of trustees and three treasury members relating to the bank account.
193. Using the word "foaki", she explained the money was supposed to be given to them to show the appreciation of the work they had done.
194. She stressed that they had no expectations.
195. It was not a "foaki"/gift, it was to show of appreciation and compensate for the work done and they were told to follow the due process.

¹ It is not clear to me, nor was it demonstrated by Counsel with reference to the affidavit, what part the witness was referring to.

196. She talked to Dr. Tu'i'onetoa, but he said he did not know what it was the Minister had spoken of that day, albeit he was present.
197. They were later told it would be paid over a year in monthly instalments.
198. They had no choice, is how she described that.
199. The money was never paid.

Tevita Lavemaau

200. He is a former Minister of the government of Tonga.
201. His affidavit with his signature he identified; it was all correct and he did not wish to change anything.
202. At Niutao on 1st October 2021 he had stood up and announced there was this money. It had been approved by Cabinet, in the presence of the Prime Minister, who chaired Cabinet meetings.
203. Dr. Tu'i'onetoa did not know he was going announce the \$50,000 fund that day.
204. The money came from a fund that Cabinet had approved. There was \$60,000,000.00 that had been made available to heal the difficulties that the Kingdom faced because of Covid 19, that is where the money came from.
205. He stressed the correct term was "a grant".
206. Yet, that did not mean \$50,000 could be given away just like that, the women would have to fulfil the proper requirements.
207. On 28th October 2021 he had made a further speech. He was referred to the transcript, exhibit 3 (b), at paragraph 5. He said that sounded correct to him, those words reflected the exact basis for the grant.
208. It reflected that there were conditions to be met; there is no such thing as giving money without conditions. There had to be a plan. The organisation would need aims and a budget and a timeline to fulfil them by.
209. It was not his duty at the Lapaha event to provide all the details, nor was it important for him personally to do so.

210. They would know what was expected, because they were in a group, these women would be accustomed to this sort of process.
211. He insisted many other groups had received funds, but when asked could not name a single one.
212. There being no re-examination or further witnesses, that was the close of the respondent's case and the evidence in the trial.

Close of the evidence

The law

213. Section 21 (1) Electoral Act provides:

Every person commits the offence of bribery who, directly or indirectly, by himself or by any other person on his behalf —

(a) gives any money or valuable gift to or for any elector, or to or for any other person on behalf of any elector or to or for any other person, in order to induce any elector to vote or refrain from voting;

214. Section 21 (2) provides:

In this section, a reference to giving money or valuable gift includes a reference to giving, lending, agreeing to give or lend, offering, promising or promising to procure or try to procure, any money or valuable gift.

215. Section 21 (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 section 24(3)) within 3 months of any election by or on behalf of a 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.

216. From this it follows that bribery can be the act of promising, lending or agreeing to give, as well as actually giving to another a valuable gift, either directly by a candidate or by another on his behalf, so as to induce a person to vote or refrain from voting.
217. The point about the phrase “valuable gift” is to refer to any valuable consideration. The consideration for a bribe need not be money, it may be any money or valuable consideration; *Launceston Case* (1874) 30 LT 823 at 825 et seq; It was the permitting the shooting of rabbits on candidate’s estate, that was held to be the act of bribery.
218. By section 21 (2) this can be by giving, by lending, agreeing to give or lend, offering, promising or promising to procure.

Burden and balance

219. *Fusitu’a v Ta’ofi & ‘Aho* [1996] Tonga LR 102, 104 – 105 is authority that the burden is upon the petitioner to prove what he alleges and it is on the balance of probabilities.
220. Paulsen LCJ in *Latu v Lavulavu* 90/2014, (29); noted that the cogency of the evidence should be of a high standard, given what is at stake. That did not mean the standard of proof in any way fluctuated.
221. There is an exception to the burden as set out in section 21 (3). That is where a candidate or another on his behalf, has given money or a valuable gift (any valuable consideration) within three months of the election. That shall be deemed to have been given to influence the vote unless the contrary is proved.
222. There are exceptions to this, set out at section 24 (3), but they do not apply in this case, nor has it been argued by any party they do.
223. The upshot being as set out in *Fasi v Pohiva* [1990] Tonga LR 79 :
- “It is for the respondent to prove that a gift made within 3 months of the election was innocent, any other gift is presumed innocent until the petitioner proves otherwise.”
224. Where section 21 (3) applies the standard of proof is the ordinary civil standard, it being on the balance of probabilities; *Fusitu’a v Ta’ofi & ‘Aho*, at page 105; *ibid*.

225. As Lord Chief Justice Whitten QC pointed out in *Sika v Fasi* CV 78/2021, paragraph 67 et seq, the first element of the offence under section 21 is the giving, the second limb is the mental element.

226. In relation to the second element there has been argued by the petitioner in this case a contrary view; *Avauli v Atiifale* [2021] WSSC 39 (16th August 2021) the Samoan Supreme Court held:

“It makes no difference whether the candidate did not authorise, did not know, or had not consented to the doing of the illegal act.”

227. This interpretation has been effectively considered and discounted by LCJ Whitten QC in *Sika v Fasi*, para 67, *Ibid*, for the following reasons:

On its proper interpretation, the second limb requires actual or inferred knowledge and assent on the part of the Respondent to the money or gift being given by that other person on his behalf. Otherwise, if a supporter gave money or a gift to a voter without any knowledge or authorisation by the candidate (or even contrary to the candidate’s express instruction not to do so), a candidate could be found guilty of bribery. That, in my view, is not a result Parliament may be presumed to have intended.

228. Relevantly, he continued in this way:

The posited interpretation of the requisite mental element for an offence of bribery in s 21 is supported by the text of other subsections therein, which speak of acts such as procuring, engaging, promising, advancing, paying and knowingly paying. By definition (and expressly in the case of the last from ss (f)), such acts can only be performed directly with knowledge or intention, or indirectly, with assent.

229. This is precisely the view set out in Halsbury’s statutes (fourth edition, volume 15 at 695) where it states “Due proof of a single act of bribery by or with the knowledge and *consent* of the candidate or by his agents...”

230. A key element is that of assent. The corollary is the candidate is empowered by free will. Knowing that another had made a payment or promised, or offered etc, some valuable consideration, that person has the option to disassociate themselves, where that had been

done prima facie in their name, but the candidate sees the potential for mischief and wishes to avert it.

231. Lord Chief Justice Whitten QC analysed this and distilled it as meaning that the mens rea of the offence “clearly requires a subjective and not objective consideration of the actions and mental state of the alleged offender.”
232. Both allegations the petitioner brings are that it was not any (single) elector that was induced to vote for the candidate by his agreeing to give, offer or promise a donation/valuable consideration but were to a number of people.
233. That is to say “for any other person on behalf of any elector.”
234. In the allegation relating to the ‘Afa wharf, the effect of that allegation is that it was all the constituents, not a specified group, as it benefitted everyone in that area and beyond.
235. In *Latu v Lavulavu*, *ibid* and *Sika v Fasi*; *ibid*, the respective Chief Justices have considered that to mean “some *identifiable* elector”, as opposed to a nebulous group.
236. This view is supported in Halsbury’s Statutes, *ibid*, at 684; described in this way : “There must be distinct evidence that the gift was made to the third person with a view to bribe a particular voter”, referring to the Clare County Case (1860) Wolf & B 138.

Submissions

Petitioner

237. The petitioner in written submissions on his behalf has argued that the scope of the petition be approached on the basis that the allegation relating to the \$50,000 pa’anga was a bribe given to the Women’s Committee of Tongatapu 10.
238. That ‘Afa wharf allegation was in relation to the people of the villages of ‘Afa, ‘Eueiki, Manuka and Navutoka.
239. That the amended opening, the evidence at trial and powers under section 35 of the Act be kept in mind in considering this.
240. There then followed a detailed analysis of the evidence and how it is argued that fitted the issues.

Respondent

241. Mr. Edwards dealt first with the allegation in relation to the 'Afa wharf.
242. He stated he, on behalf of the respondent, challenged the accuracy of the transcript (exhibit 4 (b)).
243. He asserted that the wharf did not belong to the respondent and so he had no rights to give it.
244. The argument was then advanced that the bestowing of a wharf on the 'Afa community could not amount to bribery and cited *Viliami Uasike Latu & Anor v 'Etuete Sungalu Lavulavu CV 90/2014* at 115 – 116 as proposition for this.
245. He also argued, referring to *Sika v Fasi CV 78/2021*, that there was insufficient identification of those said to be “any elector”.
246. The second allegation of bribery, relating to the announcement of the “\$50,000-00 pa'anga to the Women's Group...” is dealt with in two parts and respondent's Counsel has set out his arguments as if there were two separate allegations of bribery under this head.
247. First he argued the announcement on 1st October did not identify the tokoni would be for particular elector or electors, that it was general.
248. It was then set out over some paragraphs that first the Prime Minister was not involved in that decision to announce the money.
249. That money would be paid out in accordance with policies.
250. That it was not a spontaneous gift but made for an application for assistance to be made.
251. It is also stated that these women would be well aware of the procedures required.
252. It was also argued the respondent had not given or promised \$50,000 pa'anga to the Women of Tongatapu 10 to vote for him.
253. It is stated that the petitioner had to prove the offer of money was made “in collaboration with the respondent”

254. The argument about the need to establish a particular group being the beneficiaries is then repeated and expanded upon.
255. The Lapaha event is then dealt with but argued to be a separate allegation of bribery.
256. It is then stated the petitioner was unaware of the Niutao event and the only other witness dealing with the \$50,000 pa'anga allegation was Mr. Tokomea, who was from Tongatapu 2.

Consideration

257. Dr. Tu'i'onetoa's reputation amongst his constituents stood to benefit from a significant infrastructure project that would help the livelihoods of those who lived in T10.
258. All politicians will look to assist their constituents. That is the point.
259. But, timing and context is important to have regard to. If a candidate of power and influence bestows his generosity equally, then there can be little question of wishing to unfairly influence a vote.
260. Or, should a candidate forever work in a timely fashion and not specifically with the election looming so his character cunningly weighted to benefit, then that would not necessarily be offensive.
261. Dr. Tu'i'onetoa has argued the wharf was needed. Cyclones had devastated the infrastructure. People's livelihoods then suffered.
262. It is fundamental that a Kingdom made up of over 150 inlands of varying sizes, some small, needs those lines of communication for commerce and keeping in touch with family and friends; basic social needs, in other words.
263. He also has argued that as a politician it was right that he let the people know what he did for them and how they benefitted and, accordingly, the work he did for them.
264. The Prime Minister's Small Island Wharf Development Project (SIWDP) was intended to benefit "Tongatapu, Ha'apai and Vava'u" according to the Cabinet Decision number 259, as summarised in the letter of 31st March 2021, addressed to Mr. Daniel Fale, Chairman of the Board of Directors of Tonga Ports Authority, sent from Dr. Tu'i'onetoa own

Ministry of Public Enterprises, that announced the project's approval and the allocation of over TOP \$1,500,000.00.

265. Yet, on the evidence before me only a single project was stated and completed. That was the 'Afa wharf that linked to with the neighbouring island in 'Eueiki.
266. It was given priority and all other island wharfs were made secondary, that is set out clearly in exhibit 7, minutes of Ports Authority Records of Discussions held 1220 hrs, Friday 9th October 2020, both at item 2 of the minutes and at the bottom page 2. 'Afa and 'Eueiki being described therein as "priority 1".
267. Dr. Tu'i'onetoa explained in evidence that Ports Authority needed to undertake this project as they had the resources; the experience and equipment. He understood the thrust of the legal advice, but the project was vital.
268. Of course, other island wharf projects were vital and he did not push for them. The legal advice was quite clear; it was unlawful and the ramifications were significant, exhibit 9 "not following the law is grounds for instant termination" of the works; "the Board of Directors may also be personally liable in the courts to pay damages for ultra vires acts". Any agreement for Ports Authority to proceed with that project described by Mr. Stephenson as "legally flawed."
269. Yet, this project went ahead. On the evidence before me it was the only wharf project of the Prime Minister's Small Island Wharf Development Project (SIWDP) attempted.
270. It ran into problems. Concrete was in short supply and a lockdown as well as the pleas of the Community stake holders who asked for it to be delayed all were bypassed or ignored.
271. By the time, 6 days before the election, when Dr. Tu'i'onetoa opened the wharf he stated "*Hiki ha mavava mo fakafeta'i ki he 'ulipoto 'a Fotofili mo e poate. He toki langa uafu kuo makimo pehee.*"²
272. Judging from the above and what he said later in his interview with Broadcom Broadcasting on 13th November this was true.

² "Never has a wharf been built in such a short time."

273. *“Pea na'a ku kole 'e au ki he Minista Polisi ke faka'ataa 'enau ngaue po'uli ke 'oua te nau kau he curfew kae fakakakato 'a e ngaue.”*³
274. The lockdown Announcement Notice for 2nd to 8th November 2021 under sections 37 and 39 Emergency Management Act, enforced that all citizens of the Kingdom of Tonga remain at home, save exceptional instances.
275. Exceptions under Appendix A include vii (c):
- (i) Building and construction related to essential services and critical infrastructure.
 - (ii) Building and construction required immediately to maintain human health and safety at home and work.
276. No one has argued in this case that those exceptions arose to allow the construction of the wharf to continue. Neither could they be said to reasonably apply.
277. The wharf at 'Afa should not have been constructed by Ports Authority, but this was forced to happen.
278. Other equally necessary wharfs in other islands were side-lined to make way for this project.
279. It was rushed through to ensure that it could be opened so that Mr. Tu'i'onetoa could announce it before the election and he could then benefit from that.
280. But, who was the recipient of this?
281. It has been argued in the petitioner's written submissions that the people to benefit were the villages not just of 'Afa, but also 'Eueki, Manuka and Navutoka.
282. Those that benefitted were the people of 'Afa and 'Eueki as a whole. It was a nebulous group. It was not just the people of 'Afa, but also everyone in Tongatapu 10 and beyond.
283. I therefore agree with the submission on behalf of the respondent that the petitioner has not proved to the required standard that there was a giving of a valuable gift to any elector.

³ “And I had asked the Minister of Police to allow the workers to work during the night and they be exempt from the curfew so that they can complete the construction.”

284. I therefore find that this allegation has not been proved.

The Niutao event

285. It has been argued by the respondent in written submissions that the tokoni of \$50,000 announced at the Niutao event on 1st October 2021 by Mr. Lavemaau, then repeated by him at the Lapaha campaign event 28th October 2021 was not made to a specific group.

286. Also, that the grant was not specific, when it refers to empowering Tongatapu 10 especially women, it did not identify a particular elector or electors but referred to the Tongatapu 10, especially women and that it is general.

287. In his speech of 1st October 2021 Mr. Lavemaau said this:

“...there is an assistance from Government, from Treasury and that is \$50,000 pa’anga to be given to the Women’s Committee of Tongatapu 10.”

288. On behalf of the respondent, it was argued during the course of the trial that the money was not paid because there were conditions that needed to be fulfilled.

289. It was suggested that for the tokoni to be made there needed to be an organisation with Chairperson and members.

290. Dr. Tu’i’onetoa in his evidence stated that he “called the Secretary and asked what had happened?” in relation to their not receiving the money.

291. He also stated in his evidence that at the Lapaha event, his campaign event of 28th October “we were present there with these women, Chairman and Treasurer...”

292. Mr. Lavemaau in his evidence before me stated, when referring to the need for compliance with procedure, before payment of the \$50,000 pa’anga he had announced to the Women’s Committee of Tongatapu 10:

“They would know this from what was usual. *The Women are in a group* and would be accustomed to this sort of process”.

293. Mr. Lavemaau had therefore referred to giving to a specific group, the Women’s Committee of Tongatapu 10. Dr. Tu’i’onetoa referred to official members of that group.

294. The respondent's own witness, Milika Matavesi, gave evidence of the group providing "bank account and board of trustees' members."
295. I note that even Mr. Edwards himself, in his closing submissions document at paragraph 6, referred to them as "the Women's Group".
296. From all this I find, to the required standard, that the petitioner has proved there was a specific Women's Group in Tongatapu 10 that existed and were being referred to as the recipients of this tokoni of \$50,000 pa'anga.
297. They were the organisation referred to by Mr. Lavemaau in his speech when he stated that there was the tokoni of \$50,000.
298. I pause here to note that amongst the people to hear that announcement at the Niutao event was Miss Langaola Kiu, a registered voter of Tongatapu 10.
299. Mr. Lavemaau went on to say this when he first made that announcement:
- "And, you all know the government's process, this cheque won't be available until next week but that is confirmed."
300. The announcement of the funds was met with great appreciation, as can be told by the way the audience reacted, exhibit 2.
301. It was made just before the prize giving and general celebrations and dancing. It underpinned the celebrations that followed at the event and must have had a very positive effect on the minds of those there, given the impact of Covid restrictions on tourism and the market for handicrafts, just as Miss Amanaki had mentioned in her evidence.
302. Two issues therefore arise. (i) Mr. Lavemaau made the announcement, not Dr. Tu'i'onetoa, and (ii) the money was never paid.
303. For the purposes of the offence of bribery under section 21 of the Act, the offence can be committed "directly or indirectly, by himself or by any other person on his behalf."
304. Dr. Tu'i'onetoa was aware of the announcement. He was present at the Niutao event and can be seen clapping and smiling (exhibit 2, clock counter 12 minutes 20 seconds) when the announcement was made by Mr. Lavemaau, who, significantly, was his Minister for Finance and a fellow member of Dr. Tu'i'onetoa People's Party.

305. Both Dr. Tu'i'onetoa and Mr. Lavemaau gave evidence that the funds were there and with, what they described as the right conditions being met, the Women's Group could have had them.
306. It is also significant that this announcement was then repeated by Mr. Lavemaau at Dr. Tu'i'onetoa's campaign event 28th October 2021 at Lapaha
307. In other words, the respondent was aware of what was stated at the time. He never withdrew from that offer. On the contrary, he has stuck by it through to the Lapaha event and right through the whole trial. I form the clear view that in every sense, he has assented in what Mr. Lavemaau announced.
308. I find to the required standard that the petitioner has proved it was an offer, made by someone, on the respondent's behalf which he knew of and he assented in its being made.
309. But, an offer of what?
310. Was it a gift, or was it a grant, as the respondent has argued? Was it significant that it was never paid?
311. Miss Amanaki's evidence was telling. With her vast experience of working in government, she knew, and gave evidence that, a grant had to be budgeted for. It had to be advertised and then submissions received and reviewed. It was a process that took 3-6 months and could take up to a year.
312. It meant, with all her knowledge and experience, any money announced as being available the next week was not a grant, but a gift.
313. "Tokoni": "to help, assist, 'give a hand'." (Churchward's Tongan Dictionary, Published 1959). "to help, assist, give a hand; to contribute." (Richard & 'Ofa Thompson, Pub 1992). "to help, assist" (Shumway, pub 1971).
314. Whether it was a grant or a gift, matters not and whether it was paid or not, equally does not matter in relation to the statutory framework.
315. An offer or promise can be enough, as set out in section 21 (2) and I am quite sure that the petitioner has proved to the required standard the announcements we are concerned with amounted to just that, either an offer or a promise, or both.

316. Therefore, I find that the petitioner has proved, to the required standard, there was a valuable gift given on behalf of Dr. Tu'i'onetoa.

317. Was it given to induce any elector to vote for Dr. Tu'i'onetoa?

318. I have already found on the evidence before me the object of the gift, was a specific organisation, so not a general recipient, but a defined group, so “any elector”.

319. I have already mentioned that Miss Langaola Kiu was present on 1st October at Niutao and a registered voter of Tongatapu 10; she heard the announcement. This has all been proved by the petitioner.

320. Because of the timing, these events are caught under section 21 (3) and it then falls to the respondent to prove, on the balance of probabilities, that this was not done for the purpose of influencing the vote.

321. Dr. Tu'i'onetoa has stated in his speech, at the Niutao event, that what he was doing all the time, those two years up to the election amounted to campaigning:

“Parliamentary campaigns are little different now in that they are done every day for almost 2 years now. Shown in what we spoke of and believed in and all development plans have demonstrated whether or not we abide by what we preach during parliamentary campaigns.”⁴

322. In other words, any act on behalf of a constituent was also with an eye to getting a vote.

323. Amongst the many other references he made to government, leadership, the building of wharves and roads in that speech, he also said “...thoroughly serving now for almost 2 years and that is your wise and independent decisions made, based on your trust in God to elect the best people...”

324. He also stated this as he concluded his speech:

“I am grateful that I started with PTOA, respectfully, up to a point where they shifted their chartered course of 6 visions aimed at changing the sacred powers of our King and I

⁴ Exhibit 1 (b), para [3], page 3.

had the courage to leave and start this new vision to build our country, and avoid disruptions to the peace that we've experienced since 1875.”⁵

325. This was an exhortation to vote for Dr. Tu'i'onetoa. The act of then giving \$50,000 pa'anga “...to be distributed amongst a significant number of potential voters...”⁶ not 6 weeks before the election then speaks for itself.
326. I also have in mind that he had his banner at the event. I also bear in mind that the leaflets with his party slogan were handed out. And, that whether by design or accident, one of those leaflets with its slogan was on prominent display during a speech on the live video broadcast.
327. Considering the foregoing and the whole of his evidence and more widely the evidence at large, I am quite sure that he has not demonstrated, or even tried to demonstrate that this was not done to influence the vote.
328. The respondent has not proved on the balance of probabilities that he has rebutted the statutory assumption in section 21 (3) of the Act.
329. Accordingly, I find that the tokoni of \$50,000 pa'anga made by Mr. Lavemaau at the Niutao event and repeated at the Lapaha event some 27 days later, was an offer or promise on behalf of Dr. Tu'i'onetoa, of a valuable gift with the intention to influence any elector to vote for him.
330. I therefore find that the petitioner has proved, to the required standard, Dr. Tu'i'onetoa committed the offence of bribery.

Conclusion

331. I make a declaration that in accordance with the findings in this judgement Dr. Pohiva Tu'i'onetoa committed bribery on one occasion in breach of section 1 (a) of the Electoral Act 1989.
332. In respect of this, pursuant to section 32 of the Electoral Act 1989 I make a declaration that the election of Dr. Pohiva Tu'i'onetoa on 18th November 2021 as the People's Representative for the Tongatapu number 10 Electoral District is void.

⁵ Exhibit 1 (b) paragraph [5] page 4.

⁶ Paulsen LCJ; *Latu v Lavulavu*, *ibid*; para [110].

333. Pursuant to section 37 of the Electoral Act 1989 I shall forthwith certify this result to the Speaker of the Legislative Assembly.

Costs

334. The respondent is to pay the costs of, and incidental to, the proceedings, to be taxed in default of an agreement.

NUKU'ALOFA
29 April 2022

