

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

BETWEEN : VILIAMI UASIKE LATU

'AISEA SILIVENUSI

Petitioners

AND : 'ETUATE SUNGALU LAVULAVU

- Respondent

BEFORE LORD CHIEF JUSTICE PAULSEN

Heard : 27 March 2015

**Appearances : Mr. W. C. Edwards SC for the petitioners
: Mr. 'O. Pouono for the respondent**

R U L I N G

- [1] The respondent is the People's Representative for the Electoral District of Vava'u 16. He was elected at the General Election of 27 November 2014.
- [2] The petitioners were unsuccessful candidates in the General Election. They have filed an election petition. They seek a declaration that the respondent's election be declared void because, they allege, he committed bribery and corrupt and illegal practises in connection with his election.

The application

- [3] The respondent applies for security for costs. The application dated 13 March 2015 relies upon Order 17 Rule 1 Supreme Court Rules 2007. It pleads that the petitioners may not be able to pay the respondent's costs and that they are not residents of Leimatu'a, Vava'u. The respondent's application was supported by his affidavit which I have read and considered.
- [4] At the hearing today Mr Pouono presented an estimate of the respondent's likely costs and disbursements which amounted to \$274,000. The application seeks an order that security be provided in a sum of \$130,000. Because the application for security is dismissed there is no need for me to consider the reasonableness of this costs estimate.
- [5] The petitioners oppose the application for security for costs. They have filed full affidavits which, inter alia, provide proof of their places of residence and financial positions.

The hearing today

- [6] I heard oral submissions from Mr Pouono and Mr Edwards today. After hearing the submissions I dismissed the application, provided a brief summary of my reasons and said I would set my reasons out more fully in a written decision. These are my reasons.

The reasons

[7] In his submissions to me Mr Pouono accepted that none of the grounds in Order 17 Rule 1 (a), (b) or (c) of the Supreme Court Rules 2007 are made out. He acknowledged that the petitioners:

- a. Are ordinarily resident in Tonga;
- b. Are able to pay the respondent's costs in the event that they are ordered to do so; and
- c. Have disclosed their true addresses.

[8] On the state of the evidence Mr Pouono's concession was entirely proper.

[9] Mr Pouono submitted that notwithstanding that the respondent could not satisfy any of the grounds in Order 17. Rule 1 I had discretion to make an order that security for costs be provided by the petitioners. He provided me with no authority to support that submission.

[10] Mr Pouono submitted that I should exercise my discretion to order the payment of security because the respondent considers that the petitioners are motivated by ill-will arising from the fact that they lost the election. Assuming such discretion exists, I find the argument advanced to be unconvincing. The presence of ill-will between litigants is not unusual and is to be expected in most cases. It is not a ground to order security for costs.

[11] A party cannot, of course, pursue litigation for an improper or collateral purpose as that is an abuse of Court's processes but there is nothing to suggest that is occurring here.

[12] There is clearly on the face of the pleadings, noting the admissions made by the respondent, a serious issue to be tried. It is an unsuccessful candidate who is most affected by the result in an election and therefore most likely to file a petition. It follows that it proves nothing that the petitioners were unsuccessful in the election.

[13] Although Mr Pouono did not raise it in his submissions, I do not overlook the fact that the respondent says, in his affidavit, that the first petitioner has commenced proceedings against him for defamation. I have no submissions as to the relevance to this to the application. It seems to have been referred to by the respondent simply to show that he is facing lots of expense.

[14] I would add that, although playing no part in my decision, there are very important public policy considerations that may come into play when security for costs are sought in proceedings such as these. Included amongst those considerations is that no one should be deterred from seeking legal redress when they consider an election result has been obtained by unlawful means by the threat that they may have to pay large sums by way of security for costs.

Result

[15] The respondent's application for security for costs is dismissed. This is because none of the grounds in Order 17 Rule 1 are made out and no other matters advanced in argument for the respondent satisfy me that security for costs should be ordered.

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[16] I heard no submissions on costs. Any party seeking costs should file a memorandum and a full itemised bill of costs within 7 days. The other party will have 7 days to respond by memorandum.



A handwritten signature in black ink, appearing to read "O.G. Paulsen", is written over the right side of the seal.

NUKU'ALOFA : 27 MARCH 2015

**O.G. Paulsen
LORD CHIEF JUSTICE**