

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

Civil Judgment *AL*

*AL*  
28/06/11

CV. 236 of 2010.

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BETWEEN: SIOSAIA MOEHAU - Petitioner

AND : PITA VUKI - Respondent

BEFORE THE LORD CHIEF JUSTICE SCOTT

Counsel : W. Edwards for the Petitioner  
A. Kefu for the Respondent  
S. Tu'utafaiva in person

Date of hearing : 17 June 2011

Date of decision: 20 June 2011

Decision

1. This is an application by the Petitioner to amend his election petition presented on 16 December 2010.
2. Section 26 (2) of the Electoral Act (22/1989 as amended) provides that:

*"The member whose election or result is complained of shall be the respondent to the petition, and if the petition complains of the conduct of any official the Chairman of the Electoral Commission shall also be a respondent."*

*22/06/11*  
*rec'd 21/6*  
*AK*

3. The Petitioner did not comply with either of these requirements and now seeks to add Siosifa Tu'itupou Tu'utafaiva (the member elected) as first respondent and to substitute the Chairman of the Electoral Commission for the present respondent (the Supervisor of Elections).
4. There is no objection to replacing the Supervisor by the Chairman however Mr. Tu'utafaiva objects to being added as a respondent.
5. Mr. Tu'utafaiva pointed out that section 27 (1) of the Act requires a petition to be presented within 28 days of the result of the poll which was 25 November 2010. Relying on the general principle that the court will not allow a party to be added after the expiry of a relevant period of limitation (see White Book 1988 Edn paragraph 15/6/3), it was submitted that this court should not allow Mr. Tu'utafaiva to be joined since the 28 days period has expired.
6. As will be seen from paragraph 15/6/3 already referred to, there are a number of exceptions to the general rule. One of these is that the new party is the Attorney General and the proceedings should have been brought in his name.
7. In my view the situation here is somewhat similar. The Act requires the sitting members to be made a party to the proceedings for reasons of completeness. As pointed out by Mr. Edwards, there are no allegations against Mr. Tu'utafaiva in the petition. The Petitioner's complaint is of misconduct by election officials, police officers and members of the public. Beyond requiring filing an answer calling for the petition to be dismissed, joining Mr. Tu'utafaiva does not appear to impose any significant burden upon him.
8. In my opinion the changes which are sought are sensible and practical and consistent with the aim of O9 r1 which is to "bring all parties to disputes relating to one subject matter before the court at the same time so that the disputes may be determined without delay, inconvenience and expense of separate actions and trials." (see *Byrne v Brown* (1889) 22 QBD 657, 666-7).

9. Had the drafter of the petition takes greater care to comply with the requirements of section 26(2) of the Act, this application would not have been necessary. Crown law and Mr. Tu'utafaiva are to have their costs which I assess at TOP\$200 each, to be paid within the next 14 days.

DATED: 20 June 2011



  
M.D. Scott  
CHIEF JUSTICE