

11/11/00

IN THE SUPREME COURT OF NAURU  
(Sitting as a Court of Disputed Elections)

**MISCELLANEOUS CAUSE NO. 13/2000**

IN THE MATTER of the Electoral Act  
1965-1973

AND

IN THE MATTER of an Election in the  
Constituency of Meneng.

**PAUL AINGIMEA**

PETITIONER

**THE RETURNING OFFICER**

RESPONDENT

Date of hearing : 1 December 2000  
Date of decision: 29 January 2001  
D. Aingimea for Petitioner  
Connell for Respondent Returning Officer

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**REASONS FOR DECISION**

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This petition is filed pursuant to section 29 of the Electoral Act 1965-1973 wherein the Petitioner disputes the validity of the General Election held on the 8<sup>th</sup> April 2000 in respect of the result gazetted for the constituency of Meneng. The Petitioner, a candidate in the said election, seeks an order declaring firstly, that the candidates who were duly elected were not duly elected and secondly, that the said election for the constituency is “null and void”.

The result of the election was published in the Nauru Government Gazette of the 8<sup>th</sup> April 2000 as follows:

	<u>“CANDIDATES</u>	<u>VALUE OF VOTES CAST</u>
1.	DOGABE ABNER JEREMIAH	352,829
2.	SPRENT DABWIDO	154,139
3.	DEGABABENE ROXEN AGADIO	128,535
4.	JOSHUA PORTHOS BAIDONGO BOP	124,484

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5.	DONEKAE JIM KEPAE	151,442
6.	NIMROD BOTELANGA	287,791
7.	PAUL DELUCKNER AINGIMEA	166,932
8.	RALPH STEVEN	119,741
9.	JOHNNY TAUMEA	118,118

**PURSUANT TO** Regulation 4 of the Electoral (Electoral System) Regulation 1971 made by the Cabinet under Section 27-A of the Electoral Act 1965-1992, **I, MATHEW BATSIUA, FURTHER DECLARE** the following candidates elected as Members of the 14th Parliament for the Constituency of Meneng: -

DOGABE ABNER JEREMIAH  
NIMROD BOTELANGA”

In support of his petition the Petitioner alleges as follows:

1. “Various and known members of the constituency marked their ballot papers outside of the polling booth.”

2. "Various and known members of the constituency congregated together and helped each other to mark their ballot papers outside the polling booth."
  
3. "Various and known members of the constituency helped each other in the booth by pointing to the candidates in which order and what preference it should reflect."

At the hearing, evidence was given by the Petitioner and Mr. Daimon Togaran on his behalf. The Respondent Returning Officer gave evidence and called on his behalf the Presiding Officer of the polling booth in question, Mr. Alvin Harris. I indicated at the conclusion of the hearing that I accepted as correct the testimony of all witnesses.

The evidence established that the polling booth, the sole booth, in the constituency of Meneng, was sited at the Meneng Infant School in the corridor thereof. On the outside of the corridor adjacent to a cliff, the Petitioner noticed about 30 people congregated. He also noticed about 10 people near a frangipani tree on the other side of the corridor. He also saw people in queue at the counter of the booth waiting to collect ballot papers. They were to vote in one of two compartments in the booth.

The Petitioner witnessed voters on the cliff side of the corridor with voting papers in their hands discussing these papers. Some had voting papers in both hands. Some voters were completing their voting papers outside the voting compartments. When he was near a compartment, he saw a

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father in the compartment helping his son vote. Mr. Togaran saw young voters outside the booth filling in ballot papers. He also saw people both in and out of the voting compartments discussing their voting with each other before casting their votes.

The Respondent Returning Officer Mr. Batsiua told me he followed all procedures laid down by his predecessors. This was the first General Election he had controlled as Returning Officer. I am satisfied he properly followed the guidelines set and exercised proper control of the election. On his visit to the Meneng Booth on election day, he did not witness any irregularities in the voting procedures. He received no complaint of any. Likewise, no complaints were made to the Polling officials and I accept they did not see any of the

irregularities of which the Petitioner has told the Court.

Nevertheless, I accept as reliable the evidence adduced in support of the petition and find that irregularities amounting to breaches of the law occurred.

**The application to amend.**

At the hearing, the Petitioner applied for an adjournment for the purpose of filing an amended Petition adding further causes of action. I refused the application. The proceedings were brought over two months previously and there had been no interlocutory proceedings taken until the hearing. But, that apart, I was satisfied that, in law, no additional cause of action

could be brought into the proceedings at that stage. Section 31(e) of the Electoral Act provides that proceedings must be brought within 40 days of the gazetting of the election result.

This, in my view, means that a person disputing the election has 40 days in which to settle his claim. It cannot be altered after the limitation set by the said section had expired.

The Electoral Act enacts the code of law applying to elections. This Court of Disputed Elections is created to receive and deal with all disputes on the validity of any election (section 29). It is a special Court given a full and exclusive jurisdiction. Its decision cannot be questioned in any other Court (section 38) and it is given a procedural elasticity in dealing with cases before it. It can ignore "legal and forms and technicalities" and is guided by "good conscience" (section 37). There are, however,



certain mandatory procedural requirements laid down. Section 31(e) is one. As stated it provides that petitions "shall be filed within forty days after the publication in the Gazette of the notice in relation to the election .....". This requirement, in my opinion, prescribes a limitation of action having the same effect as these limitations laid down in the Limitation Act 1908 (U.K.) which applies in Nauru. Consequently, I am satisfied that no further cause of action can be brought into these proceedings after the expiration of the 40 days limitation set in section 31(e).

It is my view that this limitation and the provision in section 38 disallowing any appeal, indicates the legislative intention that election causes are to be dealt with expeditiously and are not to be delayed by procedural tactics.

**The Petition.**

The Petitioner alleges various irregularities by voters of the procedures laid down by the Electoral Act for the casting of votes. These have already been expressly referred to. Part IV of the Act provides procedures which govern "the Polling" process and the petition relies on section 22 therein which reads:

"22. (1) Subject to this Act an elector is not entitled to vote at a polling place other than a polling place in the District in respect of which he is enrolled as an elector.

(2) Subject to the next succeeding section, the presiding officer shall deliver to each elector claiming to vote a ballot-paper initialed in accordance with subsection (1) of the last preceding section.

(3) When he has received a ballot-paper in accordance with the last preceding subsection, an elector shall enter a voting compartment and, without leaving it, mark his vote on the ballot-paper, then fold

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the ballot-paper so as to conceal his vote and openly, in the presence of the presiding officer, place the ballot-paper in the ballot box.

(4) If an elector cannot read or his sight is so impaired that he cannot vote without assistance, the presiding officer may, at the request of the elector, mark in accordance with the wishes of the elector, fold and deposit the elector's ballot-paper for him".

It is the Petitioner's contention that the breaches by the voters of the requirements of section 22 (3) being condoned by the election officers at Meneng in charge of the Booth, allows the Court to make the declarations as prayed because by reason of this conduct it could be found that the election results had probably been substantially and materially affected in consequence thereof.

As to the contention that the officials had witnessed the

breaches and not acted to stop them, I have said that I accepted the Presiding Officer's evidence and it satisfies me that the electoral officers were unaware of any wrong doings as alleged. No complaint was made to them at the time.

On the other hand, as I have said, I accept the Petitioner's evidence and that of his witness on the conduct of the errant voters. This evidence satisfies me that those voters, by their actions, committed serious breaches of the requirements of section 22. Such breaches must bring into issue the votes which they cast and the validity of them.

But the finding of the invalidity of a vote does not, ipso facto, bring into question the validity of the election at which it is cast. It may be the catalyst for the ultimate finding of an invalid

election. To bring that question in issue there would need to be an order for a recount of the votes at which any invalid vote could be disallowed. While this would undoubtedly result in the totality of the votes cast being changed it would not necessarily follow that the election was substantially or materially affected to the extent that it allowed a declaration of successful candidates different from that officially declared in the original declaration.

The Petitioner's evidence while proving the breaches of the law, has failed to identify the miscreants to enable their votes to be considered. His case clearly founders on this lapse. There, can be no recount of votes.

There has been raised by the Petitioner the allegation of

“lobbying”. This evidence falls short of establishing in law this ground.

In the case of *Adeang v Gioura*, N.L.R. Part A page 100, a decision of Thompson C.J., this conduct was considered. The head note records the thrust of the learned Chief Justice’s ruling. It states:

“Lobbying of election candidates on polling day is not forbidden by law nor is it of itself unfair. However, the manner of lobbying may in some cases, be grossly improper so as to vitiate the election of the candidate on whose behalf it was carried out”.

What must also be emphasized is that, for the question of lobbying to be of relevance in the question of an invalidity of an election of any candidate, it must be established that the

lobbying was carried out by the candidate or by someone who was authorized by him to lobby on his behalf. There is no evidence in this case, which could support such a contention.

For the above reasons, I concluded the petition could not lie and it was dismissed. I would comment that the incidents of which I have been told involved about 40 people who were apparently attending the Polling Booth for the purpose of voting. The number involved in breaching the law is not clear, but, from the evidence I would consider no more than a third were involved in irregularities. The evidence is not enough to establish that this conduct had any significant effect on the carrying out of a fair election. Furthermore, the result of the poll at which 577 votes were cast, showed the Petitioner was third being about 120 votes behind the second candidate. These

facts militate against a conclusion that there have been a likelihood of any substantial effect on the result of the election flowing from either the breaches of the law or other behaviour of the misdirected electors.

**Costs.**

The Respondent seeks costs, these would normally follow the result of these proceedings. However, I am satisfied the Petitioner acted responsibly, and in the public interest in bringing this matter before the Court. There is no doubt the voters he said were grossly in breach of the law in acting as they did. It is probable some acted in ignorance of the breaches they committed and this case has highlighted the importance of a fair and correct system of voting. It also underlines the necessity for



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ensuring the voting procedures are known and, further, that there are adequate law enforcement facilities at polling booth to see that there is ordered voting.

Of course, the refusal to grant costs requires the Petitioner shall be refunded the deposit lodged by him on the filing of his petition.

*Gaven Donne*  
SIR GAVEN DONNE  
CHIEF JUSTICE

Solicitors for Petitioner : Alngimea & Associates, Nauru  
Solicitor for Respondent : Justice Department, Nauru

A Certified True Copy  
of the Original:

*Gabrissa G. Hartman*  
GABRISSA G. HARTMAN  
A/CLERK OF COURT

