

IN THE HIGH COURT OF SOLOMON ISLANDS

CIVIL JURISDICTION

Civil Case Number 329 of 2022

BETWEEN: **JOSEPH LEFOTO'O** - Claimant
AND: **PEARSON SIMI** - 1stDefendant
AND: **SOLOMON ISLANDS ELECTORAL COMMISSION** - 2ndDefendant

Date of Hearing: 9th August 2022.

Date of Ruling: 22nd August 2022.

Counsel; Mr Rano for Claimant.

Counsel; Mr. Ofanakwai and Ms. Fakari'i for 1st and 2nd Defendants.

KENIAPISIA; PJ:

WRITTEN REASONS FOR ORDERS MADE

Introduction

1. On the **4/8/2022**, Mr Lefoto'o went to Maoa Community High School to lodge his nomination, to contest as candidate, in the **2022**, West Kwaio Constituency ("WKC") Parliamentary by-election. On lodging nomination papers, the Returning Officer ("RO") refused Mr. Lefoto'o's nomination.
2. Aggrieved by the RO's decision, Mr Lefoto'o, came to Court on **8/08/2022**. Court heard Mr. Lefoto'o ex-parte and ordered the RO to accept his nomination with conditions. The main condition is to await Court's determination of Mr. Lefoto'o's qualification to contest in an election for Parliament, under the *Constitution*.
3. On **9/08/2022**, the Attorney General filed an urgent application to set aside the ex-parte orders. At 2:00pm on **9/8/2022**, Court convened to hear the said application. At submissions and considering evidence by the Acting Chief Electoral Officer ("ACEO") Mr. Bosoboe, it became obvious, that the RO was acting pursuant to a Constitutional Amendment that brought in a new ground for qualification to stand as a candidate for Parliamentary election in **2018** – *Constitutional (Amendment) (Electoral Reform) Act 2018, No 5 of 2018 ("CAERA 2018")*.

The CAERA 2018

4. Originally there were two grounds of qualifications for a candidate to contest in an election for Parliament. The 2 grounds were - (i) Citizen of Solomon Islands and (ii) Attain the age of 21 years – *Section 48 of the Constitution*. But under the *CAERA 2018*, a third ground was introduced, requiring a candidate, to be a *registered voter* in Solomon Islands.

5. The *CAERA 2018*, was carried or repeated further in the *Electoral Act 2018, No 6 of 2018* at *Section 64 (2) (a) (i)* – where, it obliged the RO to invalidate a nomination, if the candidate proposed to be nominated, is not qualified under *Section 48 of the Constitution*. That *Section 48* includes the new ground introduced in the *CAERA 2018* – must be a *registered voter*.
6. Mr. Lefoto'o admitted that his name is not on the current *register of voters*. The last time Mr. Lefoto'o voted was at the **2010** Parliamentary election. But as the evidence of the ACEO shows, the current *voters register*, was updated in **2018/19** and used in the **2019** Parliamentary election. Prior to that in **2013/14**, the *voters register* was also updated replacing the **2010** *voters register*. Both the **2013/14** and **2018/19** *voters register* were introduced under a wholly new system of computerized "biometric voters registration". The new system was used to facilitate the holding of elections for Parliament in **2014** and again in **2019**.
7. Materials shows that Mr. Lefoto'o was away overseas at the material time when the wholly new system was used in **2014** and **2019**, Parliamentary elections. As a result, his name was not uplifted onto the new computerized biometric *voters register*, initially in **2013/14** and later in **2018/19**. The ACEO explained in evidence, that under the new biometric system, a voter has to be physically present, to give his/her bio-data details, before he/she could be registered – bio data details such as photograph and finger print. The evidence shows this new system is more credible because it addressed issues like a falsely inflated *voter register*, in that some people may have previously double registered or some people may have died. I note from the evidence that the bio-metric voter registration system was used to update the *voters roll* in **2013/14** and again in **2018/19**. And no one challenged the legality of the wholly new introduced system.
8. Counsel Rano run the argument that the new voter registration system that replaced the **2010** *voters register* is unlawful in terms of *Section 141 of the Electoral Act 2018*. With respect that is a fatally flawed argument in law. For the said Section (see below) provides that the *register of electors* under the repealed Act, will be used, *until a revised register* is made under the *Electoral Act 2018*. As the evidence shows, the *revised register* was made in **2018/19** under the *Electoral Act 2018*, and already used at the **2019** Parliamentary elections, fulfilling the transitional intention, envisaged in *Section 141*. *Section 141* relevantly stated:

"The register of electors kept under the repealed Act is taken to be the register under this Act until it is revised under this Act" (My underlining)
9. The evidence also shows that the same revised *register of electors*, was used already in a few Parliamentary by-elections held after **2019** - in Central Honiara, North East Guadalcanal, East Makira and South Choiseul Constituencies. The same *voters list* will be used in the West Kwaio Parliamentary by-election. Mr. Lefoto'o confessed his name is not on the said *register*. He was away overseas, at the time of making the current register of voters in **2018/19**. Because his name is not on the current *voters list*, he is disqualified to contest in the Parliamentary by-election for WKC, pursuant to the *CAERA 2018*. Mr. Lefoto'o would only qualify if he meets the three Constitutional grounds under *Section 48 of the Constitution* – i.e. (i) Citizen, (ii) 21 years and (iii) Registered Voter. Mr. Lefoto'o is a citizen of Solomon Islands. He is 21 years old. But his name is not on the **2018/19** *voters list*. Accordingly; Court will set aside the ex-parte orders and declare that Mr. Lefoto'o is not qualified to run in an election for Parliament in Solomon Islands or WKC.

Impracticality of Court's ex-parte orders

10. Court cannot sustain an order, it knows cannot be enforced. The evidence shows the impossibility by law for the defendants to implement any compelling order to accept Mr. Lefoto'o's nomination. The evidence shows, at paragraphs 25, 26 and 27 of sworn statement by Mr. Bosoboë as follows:-

25. Further to that, all valid nomination forms for candidate nominees are generated through the electronic database, where each form would have its own unique identification number for each nominee. The nomination database is linked to the register of electors which can only be altered during the period of registration sanctioned by the SIEC and published in the Gazette.


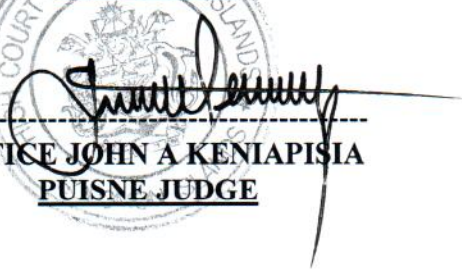
26. At present the nomination database does not recognize the claimant as a registered elector and the appropriate nomination forms prescribed under Schedule 2 of the Electoral Act will not be able to be generated from the system. Order 1 of the Ex-parte Interim Orders is not practical in this regard.

27. Ballot paper templates for printing will also be generated from this electronic system, following a draw to determine standing or position of candidates on the ballot paper that the electronic system also generates. The Returning officer's final notice to be published is also generated from the system following acceptable nomination of candidates. This has been the process for nominations in the 2019 National General Elections to date to maintain the integrity of the nomination and registration process.

11. Court does not manage Parliamentary elections. Court lacks the professional working expertise to decide on election issues and or affairs. Court cannot therefore interfere and make orders that are likely to undermine the proper management and discharge of election affairs for WKC, Parliamentary by-election. Those affairs are conducted according to law. And in this instance, the refusal to accept Mr. Lefoto'o's nomination, as a candidate, is well grounded in law – CAERA 2018 and Electoral Act 2018.

Conclusion and Orders

12. **Foregoing are the reasons for the orders Court perfected on 9/8/2022, filed at 3:40 pm. Mr. Lefoto'o is not qualified under the Constitution to run as a candidate in the WKC Parliamentary by-election. Other orders already perfected on 9/8/2022, at 3:40 pm. This file is closed accordingly.**


THE COURT


JUSTICE JOHN A KENIAPISIA
PUISNE JUDGE

