

IN THE SUPREME COURT OF SAMOA
HELD AT MULINUU

IN THE MATTER: of the Election Act 1963

AND:

IN THE MATTER: Concerning the Territorial
Constituency of
Faasaleleaga No.2.

BETWEEN: **GATOLOAIFAANA**
AMATAGA GIDLOW of
Lalomalava a Candidate for
Election.

Petitioner

A N D: **MAGELE SEKATI**
FIAUI of Iva, Candidate of
Election.

Respondent

Coram: Chief Justice Satiu Simativa Perese
Justice Tologata Tafaoimalo Leilani Tuala-Warren

Counsel: J. Brunt & E. Peters for the Petitioner
A. Sua & F. Lagaia for the Respondent

Hearing: 8-11 June 2021
Submissions: 11 June 2021
Judgment: 21 June 2021

JUDGMENT OF THE COURT

Background

[1] At the 2021 General Election for the Legislative Assembly of Samoa, held on Friday 9 April 2021, the Petitioner, Respondent, and three other candidates competed to represent Faasaleleaga 2. Faasaleleaga 2 comprises the villages of Iva, Lalomalava, Safua, Salelavalu, Vaiafai and Vaisaulu. On 16 April 2021 the Electoral Commissioner publically notified the results for this territorial constituency as follows:

Gatoloaifaana Amataga Gidlow (F)	555 votes
Magele Sekati Fiaui	649 votes
Oloapu Ka Iese	139 votes
Sua Vivian Betham Leota-Suatele (F)	129 votes
Talalafai Toma Amosa	<u>197</u>
Total valid votes	1669 votes
Informal votes	8

Candidate declared to be elected – Magele Sekati Fiaui

[2] The Petitioner has brought this petition pursuant to Part 13 of the Electoral Act 2019 (“the Act”) challenging the result which names the successful candidate as Respondent. The Petitioner alleges the Respondent is guilty of 6 counts of bribery, 1 count of treating and one count of illegal activity.

The petition

[3] The petition particularises the following acts of bribery:

- (i) On or about 15 March 2021 the Respondent gave Fataloto Faloai Fataloto \$50.00 saying *tautuana le palota*;
- (ii) On or about 23 March 2021 the Respondent gave Memea Vasati Lino \$1000 to the Women’s Committee of Vaiafai to assist with their building project;
- (iii) On or about 27 March 2021 the Respondent gave Taualoaia Valeni Faitasia \$100 and said *aua e te pisa i se isi i tei manuia le palota ae toe faaletonu ai*;
- (iv) On or about 5 April 2021 the Respondent’s committee secretary Faauliuli Pesili brought food to the house of Tofilau Filimaua witnessed by a neighbor Vitoria Faifua;

- (v) About two weeks before the General Election the Respondent gave Ioane Tomasi Sanele \$60; and
- (vi) On or about 7 April 2021 the Respondent through Magele Taumaloto gave \$600 to the Ekalesia Katoliko at Iva.

[4] The Petitioner asserts these acts prove the Respondent engaged in the corrupt practice of bribery caught by sections 94 and 96 of the Act, and, therefore pursuant to section 116 his election should be voided. She also alleges illegal activity pursuant to section 100(2) of the Act, which may also result in the voiding of his election.

The Counter-Petition

[5] The Respondent opposes the petition and brings a counter-petition. In the counter-petition he alleges bribery on the part of the Petitioner as follows;

- (i) On 8 April 2021 the Petitioner gave \$200 cash to Faafafa Auano;
- (ii) On 8 April 2021 the Petitioner gave \$300 cash to Amio Telea;
- (iii) On 8 April 2021 the Petitioner gave \$300 cash to Fuatogi Vave;
- (iv) On 9 April 2021 the Petitioner gave \$300 cash to Magele Taumaloto Tofilau; and
- (v) On 9 April 2021 the Petitioner gave \$40 cash to Tumua Olive.

[6] The Respondent argues that the Petitioner should be declared and reported as having committed corrupt practices and should be disqualified from contesting any ensuing bi- election.

Law

[7] The relevant parts of the Act are as follows;

94. Corrupt Practice:

- (1) A person is guilty of corrupt practice who commits:
 - (a) personation; or
 - (b) treating; or
 - (c) bribery.

(2) A person is guilty of corrupt practice who aids, abets, counsels, or obtains the commission of any offence listed in subsection (1).

96. Bribery:

(1) In this section, "voter" includes a person who has or claims to have a right to vote.

(2) A person commits the offence of bribery who, directly or indirectly in person or by any other person on his or her behalf either before, during or after voting:

(a) gives any money or obtains an office to or for -

(i) a voter; or

(ii) any other person on behalf of a voter; or

(iii) any other person, in order to induce a voter to vote or refrain from voting; or

(b) does any act as a result of a voter having voted or refrained from voting; or

(c) offers a gift to a person in order to induce that person to obtain, or endeavour to obtain, the return of a person at an election or the vote of a voter; or

(d) in receipt of a gift whether tangible or not, obtains, engages, promises, or attempts to obtain, the return of a person at an election or the vote of a voter; or

(e) advances or pays or causes to be paid any money to or for the use of any other person with the intent that that money is to be expended in bribery at an election; or

(f) knowingly pays or causes to be paid any money to a person in discharge or repayment of any money wholly or in part spent on bribery at an election.

(3) For the purposes of this section:

(a) references to giving money includes references to giving, lending, agreeing to

give or lend, offering, promising, or promising to obtain or endeavour to obtain, any money or valuable consideration;

(b) references to obtaining an office includes references to giving, procuring, agreeing to give or procure or to endeavour to procure, an office, place, or employment.

(4) Subsections (5) and (6) do not extend to any money paid or agreed to be paid for or on account of any legal expenses incurred in good faith at or for an election.

(5) A voter commits the offence of bribery if before or during an election he or she directly or indirectly, by himself or herself or by any other person on his or her behalf, receives, or agrees or contracts for, any money, gift, loan, or valuable consideration, office, place, or employment for himself or herself or for any other

person for voting or agreeing to vote or for refraining or agreeing to refrain from voting.

(6) A person commits the offence of bribery if after an election he or she directly or indirectly, by himself or herself or by any other person on his or her behalf, receives any money or valuable consideration on account of a person having voted or refrained from voting or having induced any other person to vote or refrain from voting.

100. Illegal activities during period of election:

(1) In this section, "period of election" means the period during an election or by-election, commencing on the day after the Commissioner gives public notice of polling day and ending at the close of the Poll on polling day.

(2) A candidate who during a period of election directly or indirectly, in person or through another person gives food, beverage, money or other valuable to a voter at a ceremony or activity is guilty of an illegal practice.

(3) A voter who during a period of election obtains or attempts to obtain, directly or indirectly in person or through a person, any food, beverage, money or other valuable from a candidate for election, is guilty of an illegal practice.

116. Void of election of candidate guilty of corrupt practice:

The election of a candidate proven at the trial of an election petition to have been guilty of a corrupt practice at the election is void.

[8] We, respectfully consider that *Petaia v Pa'u* [2006] WSSC 1 (4 December 2006) sets out the state of the law as follows;

To be guilty of the corrupt practices of bribery and treating the petitioner must prove that the respondent intended to induce the voters to vote other than in accordance with their conscience: Gagaifomauga No. 2 Territorial Constituency (1960-1969) WSLR 169 at 177; or gave with the intention of influencing the election, either generally, as by acquiring popularity, or with the intention of influencing a particular voter to vote or refrain from voting: Hereford case (1869) 20 LT 405; if in any case looking at all the circumstances, the reasonable and probable effect ... would be to influence the result of the election or to influence the votes of the individual voters, it might well be inferred that it was the intention of the persons treating that this effect should follow: In the Wairau Election Petition (1912) 2 NZLR 321; re Election Petition Anoama'a East Territorial Constituency: Faamatuainu Talamailei v Savea Sione (unreported Misc 6007; (28/7/1982)). Not only must the subjective intent of the respondent be corrupt but the methods employed must also be corrupt.

[9] Further, in *Lufilufi v Hunt* [2011] WSSC 49 (26 April 2011), and *Vui v Ah Chong* [2006] WSSC 52 the Court cited with approval Rogers on Elections (20th ed) at page 270, on the issue of a person's intent;

"The intention of a person charged with bribery must be gathered from his acts. Mellor J in *Launceston* (1874) 2 O'M & H 133 said: I cannot go into any intention of the respondent, I must be governed by what he said and what he did, and by the inferences I ought to draw therefrom. And this was followed in *Kingston-upon-Hull* (1911) 6 O'M & H 389, per Buchnill J: You cannot allow a man to say, I did not intend to do that which amounted to bribery, if when you look at all the things which he did there is only one conclusion to draw and that is that he has done that which he said he did not intend to do."

[10] We consider that it is important to note what this Court held in *Posala v Sua*:

"An intention can never be proved as a fact; it can only be inferred from facts proven beyond a reasonable doubt.

[11] The meaning of this observation was further discussed in *Vui v Ah Chong* in which Chief Justice Sapolu said:

"I accept that in order to ascertain a person's intention one has to look at what he said and what he did in the circumstances of what took place. It is not physically possible to look into a person's mind to see what he was thinking at the time when he gave out money or valuable consideration to an elector or voter. So one looks at what he said and what he did and infer from that as a fact what his intention was at the time of the giving. Sometimes the impression given by what a person said may be inconsistent with what he did. It will be for the court to decide which of the two conveys the person's true intention.

[12] The burden of proving each of the allegations lies on the petitioner who brings the allegations, and the required standard of proof is beyond reasonable doubt: In re Election Petition Safata Territorial Constituency, *Pule Lameko v Muliagatele Vena* [1970-1979].

Discussion

[13] This case is about the credibility of witnesses and the inferences that can properly be drawn from their evidence. To this end we therefore embark on a review of the evidence in relation to each allegation and counter-allegation and then render our finding in respect thereof.

The petition allegations

(i) On or about 15 March 2021 the Respondent gave Fataloto Faloai Fataloto \$50.00 saying ‘tautuana le palota’.

[14] Fataloto lives at Vaiafai and is a registered voter in Faasaleleaga 2. He says that on the day in question he and one Lealiiie were cutting down *poumuli* with a chain saw, which ran out of petrol. He then went to Lealiiie’s home to get more petrol. Tafatoa, who is Lealiiie’s brother, was at home. Magele and his mother Taumaloto were also there and they left when Fataloto arrived. Fataloto says Magele and his mother came out of Lealiiie’s house and he was greeted by Magele’s mother first then by Magele. Fataloto’s evidence is that Taumaloto said to him *talofa i si ou tei*. He says Magele then took \$50 out of his bag and gave it to him. He says Taumalotoa said to him, *tautuana le palota a si au tama* to which he replied *aua le popole*. He initially could not be certain of the colour of the \$50 note but later said *viole*. He says he is related to Taumaloto but they rarely see each other.

[15] In rebuttal, the Respondent called Tafatoa Iosefa and Taumaloto Fiaui.

[16] Tafatoa says that he is a cousin to Taumaloto, and that Taumaloto and Magele were visiting his elderly mother who is 84 years’ old because Taumaloto had just returned from New Zealand. He says he came outside when he saw Fataloto approaching the house. Tafatoa said Fataloto told him he was looking for petrol so Tafatoa called his brother to go find petrol from inside the house. Tafatoa says when Magele and Taumaloto came out of the house, Taumaloto greeted Fataloto and gave him \$50 and said *avatu lau meaalofa lea ona lea faatoa ta feiloai e mativa lava le malaga*. Magele he said did not greet Fataloto and instead walked straight to his car.

[17] Taumaloto gave evidence that she gave Fataloto a \$50 note after she told him she had just arrived from her trip after being quarantined for 3 weeks in Apia. She says she gave him a *meaalofa* because they

are related. She says Magele went straight to the car and never greeted or spoke to Fataloto. She says she never said *tautuana le palota a si au tama* to Fataloto.

[18] We consider that Fataloto was given \$50 by Taumaloto, and not Magele. We accept the evidence of Tafatoa and Taumaloto who both said that Taumaloto had given the monetary gift to Fataloto. We reject Fataloto's explanation for the gift. The evidence is at best murky about what was said at the exchange. Fataloto merely says in his sworn affidavit *faimai ia te au e tautuana le palota sa faapea mai foi lona tina o Taumaloto ia te au ia tautuana le palota a si ana tama*. Taumaloto in her evidence said:

Sa ou tali atu iai faatoa ou sau ile vaiaso ua tuana'i atu ae olea faato'a ou sau i tua talu mai le quarantine ma ou savali aga'i ile ma taavale ma si a'u tama ae oloo mulimuli mai lava i o'u tua. Sa faapea mai ia te a'u, "aua te popole ae tuu mai lou faatuatuaga o ta'ua ta te aiga" ae na ou tali mai lava iai ma le ata "Fai po'o sa'o na tala ete faia" Ona alu ese loa lea ole ma taavale.

Clearly the Court does not have a verbatim account of all the discussion between Taumaloto and Fataloto, they both provide snippets of what was said, and the gaps in the evidence is unsatisfactory. For instance, the words which are attributed to Fataloto seem to be out of context – why would he say don't worry give me your faith we are family. Mr. Brunt suggested that this could only have been said as a consequence of Taumaloto asking Fataloto to *tautuana le palota*.

[19] We do not accept Mr. Brunt's submission. We are not satisfied that the words or phrase *tautuana le palota* was ever said. That the words were said is rejected by Taumaloto, and in cross-examination of Tafatoa. The Court is of course mindful that both Taumaloto and Fataloto are related to the respondent, and we need to be cautious about their evidence, however, having seen both, we consider them to be credible witnesses.

[20] In any event, even if Taumaloto gave the \$50 and used the words *tautuana le palota a si ana tama*, the Petitioner does not succeed, because she does not establish an agency between Magele and his mother. This Court said in the cases of *Toevai v Salevao* [2011] WSSC 53 (27 May 2011); *Petaia v Pau* [2007] WSSC 19; *Netzler v Chan Chui* [2001] WSSC 18; *Election Petition Territorial Constituency of Anoamaa-i-Sasa'e, Lufilufi v Hunt* and in *Election Petition Territorial Constituency of Vaisigano No.1, Tufuga v Vaai*, that a person may become an agent in either of two ways: by actual appointment or

employment, or by recognition and acceptance, and in determining the question of agency all the circumstances must be taken together.

[21] In *Petaia v Pa'u* [2007] WSSC 19 (15 January 2007) the allegations in the petition involved the alleged giving of monies, food and drinks by the father of the respondent. The circumstances in that case involved Pa'u Sefo Pa'u the father of the respondent giving \$4,000 to the village of Sapapali'i and in his own testimony, under cross-examination, said it was his duty as the father of the respondent to assist her with her candidacy; they were on a familiarisation trip in the district as the respondent was not known by most electors in the district. They visited families and attended church gatherings together; the father did the talking and the giving of monies and food whilst the respondent watched in silence and sanctioned all her father was doing. The Court in that case concluded, "we can confidently infer from the undisputed evidence that the father dictated and steered the drive to promote the election of the respondent".

[22] None of the circumstances present in *Petaia v Pau* are present here. First, there was no appointment or employment established, and, secondly, there was not any evidence presented that Taumaloto was recognised and accepted as an agent of Magele.

[23] For the petitioner to be liable for the actions of his mother Taumaloto we have to be satisfied that she was an agent of the petitioner. In *Kasimani v Seuala* [2011] WSSC 87 (8 August 2011), the Court said;

In *4 Halsbury's Laws of England* vol 18, para 703, it is stated:

"If a candidate's wife interferes in an election she is ipso facto his agent. Personal intimacy with a candidate is evidence of agency. The mere fact, however, that the alleged agent is a brother of the candidate or the partner or son of an authorised agent is not sufficient to establish agency".

128. In *Parker's Law and Conduct of Elections* (supra) vol 1, para 19.51, the learned authors state:

"Evidence of close acquaintance with the candidate is important evidence to establish agency. But the mere fact that the alleged agent is brother to the candidate, is not sufficient to establish agency (*Ipswick, W & D 173 at 178*)".

129. We take the view that the above statements of principle which apply to a brother of the candidate also apply to a sister of the candidate. There should be no different principle which applies to a sister of the candidate.

[24] Similarly in this case, the principle applies to the parent of a candidate. The mere fact of the relationship between Magele and his mother is not sufficient to establish agency. There is no evidence here to establish that Magele's mother was a member of his committee, or had any significant involvement in promoting his candidacy. Any evidence of this nature would have potentially satisfied us that she was his agent, in its absence we cannot be satisfied that she is his agent.

Finding

[25] This allegation has not been proved beyond reasonable doubt and is dismissed.

(ii) On or about 23 March 2021 the Respondent gave Memea Vasati Lino \$1000 to the Women's Committee of Vaiafai to assist with their building project;

[26] Memea Vasati Lino, the secretary of the women's committee of Vaiafai gave evidence that Magele came to a home owned by Moemai Filifili and gave \$1000 towards the building of the *Fale Komiti*. Memea's initial evidence was that the gift was from Magele, but she later added that although Magele handed over the money that he said the money was from his mother, who is from Vaiafai. She says there were two other ladies with her at the time, Salaina and Leausa. A neighbor by the name of Moemai Kome came to receive the money and thank Magele, then Moemai handed the money to her.

[27] Moemai Kome was called by the respondent to give evidence in reply to Memea. Moemai Kome says Memea was not present at the time Magele came to Moemai Filifili's house, only Salaina and Moe. Moemai Kome says Magele gave \$1000 which he said was from his mother, and he gave it to Salaina.

[28] Taumaloto, Magele's mother, was also called by the respondent and gave evidence that she saw an online Facebook post while she was in New Zealand. The post had been made by the carpenter who was building the *fale Komiti*, and it sought contributions of money to pay for the building of the *fale komiti*. Taumaloto then told her children in New Zealand to send some money to Magele in Savaii to take for her contribution because she would be in quarantine for 3 weeks upon return to Samoa. Her reasons for choosing Magele from among her children living in Samoa were that Magele was a matai and lived in Savaii and she thought it was appropriate for him to take her money. She gave evidence that she and her mother had been active in the *komiti* when she lived in Vaiafai.

[29] We accept that Magele took \$1000 to contribute to the building of the fale komiti of Vaiafai. We also accept that, as both Memea and Moemai gave evidence, that he gave it over on behalf of his mother who we accept is passionate about the women's committee of Vaiafai.

[30] We note that Memea's evidence tended to suggest that Taumaloto's link to Vaiafai was tenuous, historical and irrelevant. We expect that this evidence was intended to lead the Court to drawing an inference that there were other reasons, perhaps nefarious, behind the gifting of the money. We decline to enter into that realm of speculation. We accept that Taumaloto was born in Vaiafai, but that she has lived in her husband's village for many years. We also accept that Taumaloto and her mother were members of the Women's Committee whilst they lived in Vaiafai, and that the construction of the new building in 2021 was the first time the Women's Committee premises had been replaced. In other words, there is compelling evidence which leads us to conclude that the dominant purpose of the gift was that it was bona fide, or a true gift, for the provision of continued public service to the people of Vaiafai. As the evidence suggests, it was not a gift from the respondent, but from the respondent's mother on account of her link to Vaiafai.

Finding

[31] We are not satisfied beyond reasonable doubt that the giving of this money by Magele was with the intention to induce the women's committee of Vaiafai to vote for Magele.

(iii) On or about 27 March 2021 the Respondent gave Taualoaia Valeni Faitasia \$100 and said aua e te pisa i se isi i tei manuia le palota ae toe faaletonu ai;

[32] Taualoaia Valeni Faitasia alleged in his affidavit, dated 28 April 2021, that on the 27 March 2021 Magele gave him \$100 and said to him *aua e te pisa i se isi i tei manuia le palota ae toe faaletonu ai*.

[33] Taualoaia is a carpenter, living in Iva, Savaii. He said that when he woke on Saturday 27 March 2021, he felt like he wanted to drink alcohol. He went next door to his friend Enekosi Faamoe, who owned a car. After a discussion with Enekosi, wherein it is alleged that Enekosi suggested that they go to find an electoral candidate for some *fesoasoani* they drove to Lalomalava to visit Vaaelua Faapoipoi - Gatoloai Ama - the Petitioner's son. Vaaelua was not home, and so they drove to the respondent's house. They thought that Magele was at home because his car was out in front of his house. This would have been between 8 and 9 in the morning.

[34] Taualoia then got out of the car and approached Magele's house, and called out Magele's name; Enekosi remained in the car. Magele came out of the house. By this time, Taualoia was standing at the second of approximately five steps. Taualoia's evidence is that (pg 7 8/6)

Ou fai atu loa ia Magele, malie lau afioga e iai le mea na ma savalivali mai ai e manaomia se fesoasoani mai lau afioga, ia ae silasila mai loa Magele i lo'u vae, fesili mai loa ia te a'u i le tulaga o le manu'a, ma talatalanoa ai a lea

[35] Taualoia says that Enekosi approached them – he and Magele, whilst they were talking. Taualoia's leg was injured at work. He said (pg 7 8/6)

Peitai ane e lei uma la'u faamatalaga muamua ae fesili Magele i lo'u vae ona o'u faamatala lea iai ona ou faapea atu lea ia Magele ia, o le isi mea lea na alai ona ma o mai o sau fesoasoani sei ma o ile falemai sei fai lo'u vae

Emphasis added

[36] The discussion between Taualoia and Magele continued, and Magele is said to have gone back into his house and returned with \$100, which he then handed Taualoia. Whilst handing the money over, Taualoia says that Magele said to him: (pg 9 8/6)

Fai mai e tautuana ma ma'ua aua nei iloa e se isi ne'i mae'a ane le palota ua manuia ae toe faaletonu ai

[37] In cross-examination, Taualoia explained in more detail the motivation behind seeking out the electoral candidates on that Saturday morning (p 13/14 8/6).

Lagaia: O le sa'oga la lea o lea sa lua talanoa ii e fai le lua tonu, ete lua o la, e su'e le sui tauva mo se fesoasoani e ave ai oe i le falemai o le sa'oga lea?

Wit: O lo'u lagona ou te fia inu, o Enekosi o lae mana'o e ma te o ma ave ai a'u i le falemai, o lae alofa mai i lo'u vae e tatau ona ma o i le falemai

Lagaia: O Enekosi lea e popole mai lou vae

Wit: O lea lava

Lagaia: A'o oe ia, ete le'o popole i lou vae na'o lou fia inu?

Wit: O lea lava

[38] After receiving the \$100 Taualoia and Enekosi did not travel to the hospital for treatment for Taualoia's leg. Instead they went to a shop where Taualoia purchased alcohol, a bowl of saimigi and he gave Enekosi \$45 to pay for the use of the car.

[39] The Respondent called Enekosi to give evidence in reply to Taualoia. He confirmed that they had asked Magele for money to help pay for medical treatment. He further says that Magele told them that he could not give them money because it would be unlawful, but that he was prepared to help them to pay for medical treatment. However, Enekosi said that once they were given the money for medical treatment, that they went to the shop where Taualoia purchased alcohol.

[40] We have no hesitation in dismissing this claim by the Petitioner. Taualoia was given money to help him with his medical expenses, which he promptly, as he had always intended, used to purchase alcohol. Perhaps that is what he meant by getting treatment for his injury.

Finding

[41] We are not satisfied beyond reasonable doubt that the respondent bribed either Taualoia or Enekosi. Giving money to someone to help them to meet medical expenses is not in and of itself an act of bribery. Accordingly, the elements of the offence of bribery are not proven beyond reasonable doubt, and it is dismissed.

(iv) On or about 5 April 2021 the Respondent's committee secretary Faauliuli Pesili brought food to the house of Tofilau Filimaua witnessed by a neighbor Vitoria Faifua;

[42] Vitoria Faifua lives next door to Tofilau Filimaua. On the evening of the first day of the special votes (5 April 2021), Vitoria saw a white van bring lots of food to her neighbour's house. The van was allegedly owned or at least used by the Respondent's committee members.

[43] We are invited to draw from Vitoria's evidence an inference that this food, both the quantity and perhaps quality, and the circumstances of its delivery to the neighbour, were the unlawful act of treating by the Respondent. There were apparently many large plates of food, described by the witness as "special" plates.

[44] In reply, the Respondent called Mr. and Mrs. Pesili. Both were heavily involved with their local Assembly of God Church, and both gave evidence about a practice of their Church, in particular the men of the congregation to meet on the first Monday of each month. They would pool gifts, which would include rice, that would be distributed to the villages. They rejected the proposition that on the 5th April – being the first Monday in April, that there would be a large white van full of food being dropped off at Tofilau Filimaua’s place, but rather there would be a lot of presents for their charity run. Tofilau Filimaua was Vitoria’s neighbour.

[45] The Petitioner’s claim of treating and or bribery has no merit. Even if we were to uncritically accept Vitoria’s evidence, it does not establish a connection between the delivery of food, the Respondent and voters in his constituency. This claim is therefore dismissed.

(v) About two weeks before the General Election the Respondent gave Ioane Tomasi Sanele \$60;

[46] Two weeks before the General Election, Ioane says he and his friend Fale were driving to Magele Sekati’s house to ask for money, when they met him on the side of the road. Magele told them he did not have any money. Ioane says that Magele then told them to follow him so he could go to find money for them.

[47] Ioane in his affidavit, dated 30 April 2021 said at paragraph 9:

....O le taimi lea sa tuuina mai loa e Magele Sekati le tupe e \$60.00 ia te au ona o au lea sa ou pito i ai.

[48] Ioane confirmed in his oral evidence in chief that Magele did not say anything when he handed him the \$60.

[49] The Respondent called on Pauli Faleatuse Olive to reply to Ioane’s allegations. Pauli confirms he drove Ioane to Magele Sekati’s house. His affidavit dated 5 May 2021 provides:

3.2 O le taimi lea sa falo ane lava lea o Ioane Tomasi mai le nofoa lea e nofo ai mai o’u autafa i totonu o le taavale ma faapea ane “*e malie lau Afioga pe iai sau \$100.00 e fai ai la’u faalavelave*” A e tali iai Magele “*O a’u nei e leai ma se tupe o iai. Na e te iloa ua fa’afia na e sau mo se tupe ae e leai lava se tupe o iai ona o lo’u mativa. E le avefa for nei palota o le a tou faapea mai e*

iai se faletupe ia te a'u. Ae malie se'i o atu i Vaiola i feiloaiga a lo'u aiga pe maua mai ai se tupe lea e te mana'o mai iai.

[50] Ioane says Magele Sekati gave him \$60. Pauli confirmed the payment, which he said was made in the following context:

3.5 Na mae'a lena ma aga'i loa ia Oloau. A o ma aga'i atu i Oloapu ae ma vaaia loa le pasi ane o le taavale a Magele iina i Lalomalava ma sa ma tuituliloa atu loa le taavale a Magele ma faaee atu iai le pu o la'u taavale. Sa tu mai loa lea o le taavale a Magele ma faapea mai "*ia e malie, pau lava o se tupe ua maua e fesoasoani ai mo lou faalavelave.*" Ia na savali loa lea iai o Ioane Tomai i le taavale a Magele ma tuuina ane loa iai e Magele le \$60.00 ma toe fai iai Magele "*Faamolemole e le faapea ua ave atu nei tupe on faapea lea o se taumafai atu ona o le palota, la pau lava se tupe ua maua atu i lou faalavelave.*"

[51] The money was never used for a faalavelave. Ioane instead used it to buy alcohol.

[52] If Ioane's evidence is accepted, then it must have been the case that he came up with a plan to trick Magele out of money – to ask for money for a faalavelave. He went to seek Magele out, not the other way around. There was no faalavelave, he knew that. He wasn't particularly concerned about who gave him the money – he also went to the Petitioner's family to try to get money, but there was no one home.

Finding

[53] From these circumstances it is simply not possible to assess whether, if any money was given, it was given by Magele with the intention of inducing Ioane to vote for him, beyond a reasonable doubt. Pauli, who sat right next to Ioane gave a very different version of the circumstances upon which the money was given and this creates in our view a reasonable doubt. This charge is accordingly dismissed.

(vi) On or about 7 April 2021 the Respondent through Magele Taumaloto gave \$600 to the Ekalesia Katoliko at Iva.

[54] Memea, who gave evidence about the \$1000 donated to the Women's Committee, also alleged that the Respondent offered to donate \$1000 to the Ekalesia Katoliko at Iva for their Tausala. Her

evidence is that she, together with two other persons visited Magele and they asked him for his support. The allegation is that he agreed to donate \$1000. Memea's allegations are however uncorroborated, we did not hear from the other two people who were said to also be at the meeting. Even after receipt of Magele Taumaloto Tofilau's evidence in reply, the Petitioner elected to not call the other two witnesses who might have been able to confirm Memea's evidence.

[55] Memea's evidence is that on the day of the *Tausala*, she received a call from Magele who she says advised her that he was not able to attend and Magele Taumaloto Tofilau would attend to do his *taualuga*. Magele Taumaloto Tofilau was called on behalf of the Respondent. He flatly rejected Memea's suggestion that he attended the *Tausala* on Magele's behalf. He says that this was not possible as he had a *matafale* at the Ekalesia and therefore attended on his own behalf, and the money he gave was his own money, which he had saved from the remittances sent by his children. Magele Taumaloto also said that he had not spoken to Magele about the *Tausala* at all.

[56] We consider Memea's evidence implausible. The suggestion that a *matafale* member would willingly represent and attribute to a non *matafale* member the value of the funds donated at a fundraising *tausala*, is one which requires some corroborative support. It is not as if the Petitioner did not have anyone to call who could corroborate the initial promise of a monetary gift. We note there was no evidence that the other two people who initially met with Magele were unavailable to give evidence.

[57] We prefer the evidence of Magele Taumaloto. He was steadfast and forthright in his evidence.

Finding

[58] We find that the elements of the offence of bribery have not been made out beyond reasonable doubt and we accordingly dismiss the claim.

The Counter petition

[59] We will deal with the claims by Faafafa Auano (\$200), Amio Telea (\$300) and Fuatogi Vave (\$300) jointly – all belonged to the FAST political party.

[60] All three said that they went to Gatoloaifaana's home and she gave them cash of between \$200 and \$300 each on 8 April 2021.

[61] Members of opposing political parties are not barred from giving evidence in matters involving bribery and corruption, but their evidence must necessarily be treated with caution. They have an interest in the outcome of the petition or as in this case the counter petition.

[62] In this case, that caution is all the more acute when one considers that Faafafa, Amio and Fuatogi are all related by marriage. They are close relatives, their account of events were remarkably similar, and one of them could not tell the time and when he was supposed to have been bribed by the petitioner. We also note that Faafafa Auano says he did not tell the petitioner that he was a member of FAST, all the while allegedly accepting money from her, but that he came to the witness box wearing his FAST ie *lavalava*, and asserting to the world who he supported. And, without prompting, he said that Gatoloaifaana should not have given him \$200 but \$2000 instead.

Finding

[63] We do not intend to spend time analysing the evidence of these three witnesses. Without independent corroboration we consider that their allegations of bribery cannot be safely considered, and they are accordingly dismissed.

Allegation of payment of \$300 to Magele Taumaloto Tofilau on 9 April 2021

[64] We have previously noted our acceptance of Magele Taumaloto's evidence with respect to his role in the *Tausala* for the Ekalesia Katoliko i Iva.

[65] Magele Taumaloto's evidence is that on the morning of 9 April 2021, he was by his taxi waiting for a passenger. He met with Gatoloai and another woman he did not know. This other woman gave him money, which he later learned was \$300. Gatoloai also asked him to meet up again at the *tapuaiga*. Magele did not consider the invitation to be odd, because he and Gatoloai were family, but he did consider the payment of the money to be something in the nature of a bribe.

[66] Although family, Magele Taumaloto gave evidence that for the 2021 General Election, he voted with his Matai title and did not vote for Gatoloaifaana.

[67] Magele Taumaloto says at paragraph 7, 8 and 9 of his affidavit dated 11 May 2021:

7. Sa fesili mai loa Gatoloai Ama mai totonu o lana taavale pe aisea ua ou nofonofono ai i o, ae ou te le alu e fai la'u palota ma sa ou faailoa iai o a'u lea e faatali la'u pasese le e alu atu i totonu o le faleoloa a le saina e fai lana faatau. Sa faapea mai, ou te vave atu i le tapuaiga a le matou aiga o lo o fai i lona fale. Sa nofo loa le teine lea e saofafa'i mai ma Gatoloai Ama i totonu o le taavale ma tuu mai le tupe ia te a'u ma faatofa mai loa ma toe tumuli atu i le taavale.
8. Na ou tago loa lea ma siaki le tupe ma faitauina, e maua ai le aofaiga e \$300.00 tala.
9. Ona pau lea o la'u molimau. Ma ou te faia lenei faamatalaga ma le faamaoni.

[68] By the time of the trial, Magele Taumaloto appears to have changed his evidence slightly but materially, as is evident in this exchange (p46/47 - 9/6/21):

Lagaايا	ete silafia le mafuaaga na ala ai ona tuu atu e le teine lea le tupe ia te oe? Le teine lea e faapea sa o atu ma Ama?
Wit	e pau a le lagona na ia te a'u ia e mo'i e le o Gatoloai lea na tuu maia ae foliga mai o se faatosina o le palota aua lea foi na ou fai atu talu ona ou ola faatoa tupu lea o se mea o se tupe lapo'a ua avatu ese tagata ia te a'u i se taimi faapea.

[69] The word *faatosina* was not referred to in his affidavit, it was only mentioned at the end of re-examination and its probative value is therefore a matter of weight.

[70] We remind ourselves that a bribe is money given directly or indirectly either before, during or after voting with the intention of inducing a person to vote for the giver. It appears that the money which was given to Magele Taumaloto was given at a time when Magele Taumaloto had already voted. In our view, this is irrelevant as the issue of bribery concerns the intention of the alleged offender.

[71] We are not persuaded beyond a reasonable doubt that an intention to bribe Magele Taumaloto can be attributed to Gatoloai. Firstly, there is a significant family relationship at play, the complexities of which were not fully explored at the hearing. Suffice to say Magele Taumaloto says that he and his family have always supported Gatoloai because they are family. This sense of family is reflected in Gatoloai's apparent statement that Magele Taumaloto should make his way to their family gathering or *tapuaiga*. We cannot discount that the money could have been given under the auspice of a family connection/member. Secondly, there are no words or form of words or actions attributed to Gatoloai

supporting an inference that the money was a bribe, such as *tautuana ma oe le palota*. Thirdly we note Magele Taumaloto's oral evidence that he had never been given that amount of money before by Gatoloai is unreliable. We consider that this material allegation should have been included in his affidavit: and as is with the failure to mention the alleged *faatossina* referred to above, we give this evidence little weight because it has not been fully considered and tested. Its late inclusion amounts to ambush of the Petitioner.

Finding

[72] There is reasonable doubt that the money given to Magele Taumaloto amounts to a bribe for the purposes of the Act, and this charge is accordingly dismissed.

The cash given to Tumua Olive of \$40 on 9 April 2021.

[73] Tumua Olive says that he was standing with friends at the market when Gatoloaifaana's car stopped on the other side of the road and she called them over. She is said to have given Tumua \$40 for him and his two other friends. The money was given with the words – *tautuana le palota*, which he understood to mean that they should vote for Gatoloaifaana. He took the money because he had already voted and would not therefore have been able to be bribed.

[74] We consider the allegation implausible. It is difficult to accept that the Petitioner stopped her car in a conspicuous place, being the main road, on the morning of election day and blatantly handed out money to people she had not met before, at a huge political risk to herself. Tumua's evidence is also uncorroborated, notwithstanding the allegation that there were two other people who were allegedly with him.

Finding

[75] We are not satisfied beyond reasonable doubt that the events according to Tumua, took place. This allegation is accordingly dismissed

Conclusion

[76] In relation to the Petition, we do not find that the allegations contained therein have been proven beyond reasonable doubt and we dismiss the Petition in its entirety.

[77] Similarly, we also find that the allegations contained in the Counter-petition have also not been proved beyond reasonable doubt, and it is dismissed.

[78] Each party will bear its own costs.

[79] The security for costs paid by the Petitioner will be reimbursed to her.

S. Perese

Chief Justice Perese

Veilani Tuala
Justice Tuala-Warren

