

**IN THE SUPREME COURT OF SAMOA  
HELD AT MULINUU**

**IN THE MATTER:** of the Electoral Act  
2019.

**A N D:**

**IN THE MATTER:** Concerning the  
Electoral Constituency  
of Vaimauga 3

**BETWEEN:** **TAIOALIISEU  
AIMAASU**, a  
candidate for the  
Constituency of  
Vaimauga 3

*Petitioner*

**A N D:** **LAUTIMUIA  
UELESE VAAI**,  
Elected Candidate for  
the Constituency of  
Vaimauga 3.

*Respondent*

**Coram:** Justice Fepuleai Ameperosa Roma  
Justice Loau Donald Kerslake

**Counsel:** L. Su'a - Mailo & M. Volentras for the Petitioner  
K. Koria for the Respondent

**Hearing:** 10 - 12 June 2026, 16 – 17 June 2026

**Submissions:** 24 June 2026

**Ruling:** 29 June 2026

**JUDGMENT OF THE COURT**

**BACKGROUND:**

1. A general election was held on Friday, 29 August 2025. The Petitioner and the Respondent were two of four candidates for the electoral constituency of Vaimauga 3.

2. After the official count, the Petitioner polled the highest number of votes and was officially declared the member of Parliament for the electoral constituency of Vaimauga 3.<sup>1</sup> He was sworn into Parliament on 16 September 2025.
3. On 10 March 2026, the Petitioner resigned from Parliament. The Speaker of Parliament accepted the resignation and made the announcement on the same day. As a consequence, the seat for the constituency of Vaimauga 3 was vacated.
4. On 6 April 2026, the official public notice of the writ for by-election for the electoral constituency of Vaimauga 3 was published. The writ informed the public of the following dates:
  - (a) Nomination of candidates – Friday, 10 April 2026 between 9.00am and 4.00pm;
  - (b) Withdrawal of nominations – Thursday, 16 April 2026 at 12 noon;
  - (c) Pre-polling day Wednesday 29 April 2026;
  - (d) Polling day Friday, 1 May 2026; and
  - (e) Return of writ for by-election – Monday, 4 May 2026.
5. At the close of the nomination of candidates, 4 candidates officially confirmed their desire to run in the by-elections including the Petitioner and the Respondent.
6. The pre-polling for the by-election was held on Wednesday, 29 April 2026 whereas the polling day was Friday, 1 May 2026.
7. The official results of the by-elections published on 2 May 2026 read as follows:
 

|                              |      |
|------------------------------|------|
| LAUTIMUIA Uelese Vaai        | 1802 |
| PUAALATAMAI TUPUOLA Filemoni | 474  |
| TAIOALIISEU Fiti Aimaasu     | 996  |
| TUUAMAALII TUPUOLA           | 573  |
8. The results show that the Respondent polled the highest number of votes by a margin of 806 votes to the second placed Petitioner. The Respondent was officially declared the member of parliament for the electoral constituency of Vaimauga 3. He was sworn into Parliament on 26 May 2026.

#### **The Preliminary Rulings**

9. Before the commencement of trial, we ruled on the preliminary applications of both the Petitioner and Respondent, with reasons to follow in this written judgment. We ruled:
  - (a) The hearsay evidence of Elsie Amani Nikolao is excluded from the trial of this petition;

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<sup>1</sup> Official results for the General Elections 2025 was declared by the Electoral Commissioner on 6 September 2025. The return of writ signed by the Head of State was dated 8 September 2025.

- (b) Leave was granted to the Respondent to file the unsworn affidavit of Matagofie Kome Feagaimaalii, the signed copy of which was subsequently filed in accordance with the Court's direction by 5 June 2026; and
  - (c) Leave was also granted to the Respondent to include "Annexure A", filed on 3 June 2026 in the affidavit of Taupule Matautia Peteli.
10. These are our brief reasons.
  11. In granting orders (b) and (c) we consider that:
    - (i) Matagofie had agreed to testify, and his affidavit had already been prepared at the time the Respondent was required to file affidavits in response to the petition. An unsigned version had been filed with the Court;
    - (ii) His absence overseas for a family *faalavelave* provided a valid reason why the affidavit could not be properly sworn at the relevant time;
    - (iii) The signed copy was filed by 5 June 2026 as directed by the Court at the mention on 3 June 2026;
    - (iv) "Annexure A" to the affidavit of Taupule Matautia Peteli had been filed and served prior to the mention on 3 June 2026; and
    - (v) The granting of these orders did not result in any prejudice to the Respondent.
  12. As to Order (a), the Petitioner sought to admit the hearsay evidence of Elsie Amani Nikolao, namely - a video recording (audio and visual) taken by her of a conversation with her father, Sagauga Amani Nikolao, in which he describes the Respondent giving him sums of money and food items during the election period. This evidence is intended to support bribery allegations (xi) & (xii), as well as the sole treating allegation in the Notice of Petition.
  13. Sagauga was not listed as a witness for the Petitioner and had not sworn an affidavit.
  14. The Petitioner submitted, and we accept, that the Court has extensive inquisitorial power under ss115(4), 118 and 127 of the Electoral Act 2019 ("the EA 2019") to consider and take into account evidence that is not ordinarily admissible in the Supreme Court (see *Lameko v. Onesemo [2026] WSSC 1*).
  15. However, those powers should not override or substitute the relevant and clear provisions of the Evidence Act 2015.
  16. There was no dispute that the recording constitutes a "hearsay statement" in accordance with the meaning of section 2 of the Evidence Act 2015. It is therefore inadmissible except as provided by Part 2, Division 1 of the Evidence Act 2015, or any other enactment or "... in cases where ... the hearsay statement

is relevant and not otherwise inadmissible under the Act.” (s9(4), Evidence Act 2015).

17. Section 10(1) then relevantly provides:

“(1) ... a hearsay statement is admissible in any proceeding if:  
(a) the circumstances relating to the statement provide reasonable assurance that the statement is reliable; and  
(b) either (i) the maker of the statement is unavailable as a witness; or (ii) the Judge considers that undue expense or delay would be caused if the maker of the statement were required to be a witness.”

18. As submitted by counsel for the Respondent, the Petitioner must satisfy two requirements for the hearsay statement to be admitted under s10(1) of the Evidence Act 2015 in this case:

- (i) that it was made in circumstances providing reasonable assurance of its reliability; and
- (ii) that the maker of the statement is unavailable as a witness.

19. In respect of the first requirement, we are not satisfied that the circumstances relating to the statement provide reasonable assurance of its reliability. We note the following:

- (i) The recording was made secretly, in the context of an election petition, and without the knowledge of Sagauga. (“... *Na ou pu’e lenei talanoaga e aunoa ma le iloa e lo’u tama*”);
- (ii) Elsie’s assertions regarding her father’s state of mind and his truthfulness amount to speculation and are therefore unreliable. (“*O lea fo’i e faamatala e lou tama tupe ma pusa apa i lona lava loto malie aua e leai ma se mea o ia nana na faailoa uma mai lava i le ma talanoaga*”); and
- (iii) Although *Lameko v. Onesemo* [2026] WSSC 1 at [73] to [75] provides useful guidance on the admissibility of hearsay statements, a significant feature of that case was the absence of any dispute as to the facts. In contrast, the truthfulness of the hearsay statements in the present case is strongly denied by the Respondent.

20. As to the second requirement, Sagauga cannot be said to be unavailable as a witness. He is alive, remains in the country, and appears to be in a fit physical and mental condition to testify. The only explanation offered for his absence is that he is unwilling to testify (“*e leo fia molimau lo’u tama i lenei mataupu...*”). This does not constitute good reason and does not satisfy the definition of unavailability under s9(2).

### **The Petition**

21. The Petitioner pursuant to section 108(2) of the EA 2019 polled sufficient votes to qualify to petition. (He reached 50% of the winning votes).
22. The Petitioner by a Notice of Motion complaining of an unlawful election dated and filed on the 1 May 2026 (“the petition”) seeks to declare invalid and void the election of the Respondent for having breached the EA 2019 by way of corrupt practices. He also seeks an order to declare him as the elected candidate for the electoral constituency of Vaimauga 3. The petition was advertised on 22 May 2026.
23. Before the evidence was heard, counsel for the Petitioner sought leave to withdraw allegation (xiii) of the petition which was granted and accordingly dismissed.
24. As a result of our preliminary ruling, the Petitioner did not pursue allegations (xi) and (xii) for bribery, and the sole allegation of treating in the petition. These allegations were withdrawn by leave and dismissed by the Court on 24 June 2026.
25. The remaining allegations of corrupt practices can be separated into four groups:
  - (a) Allegations of bribery on Monday, 20 April 2026 at the maota of Lealasola at Leone:
    - (i) Allegation (i): \$100 given to Haloseta Lavea and Pa’o Savali registered voters of Vaimauga 3 with the intent to corruptly induce them to vote for the Respondent;
    - (ii) Allegation (ii): \$10 given to Gabrielle Tapumanaia, a registered voter of Vaimauga 3 with the intent to corruptly induce her to vote for the Respondent;
    - (iii) Allegation (iii): \$20 given to Vitolio Tapumanaia a registered voter of Vaimauga 3 with the intent to corruptly induce him to vote for the Respondent; and
    - (iv) Allegation (iv): \$20 given to Asofa Tapumanaia a registered voter of Vaimauga 3 with the intent to corruptly induce him to vote for the Respondent.
  - (b) Allegations of bribery on 20 April 2026 at the maota of Leaumoana at Leone:
    - (i) Allegation (v): \$20 given to Miriama Liaina a registered voter of Vaimauga 3 with the intent to corruptly induce her to vote for the Respondent;

- (ii) Allegation (vi): \$20 given to Alamai Fatu a registered voter of Vaimauga 3 with the intent to corruptly induce her to vote for the Respondent; and
  - (iii) Allegation (vii): \$30 given to Tiresa Leauomoana a registered voter of Vaimauga 3 with the intent to corruptly induce her to vote for the Respondent.
- (c) Allegations of bribery on or between 20 April 2026 and 24 April 2026 at the maota of Toomalatai at Matautu Tai:
- (i) Allegation (ix): \$25 given to Filifilia Avau a registered voter of Vaimauga 3 with the intent to corruptly induce her to vote for the Respondent; and
  - (ii) Allegation (x): \$25 given to Leaauta Lauaki a registered voter of Vaimauga 3 with the intent to corruptly induce her to vote for the Respondent.
- (d) Allegation (xiii): Allegation of bribery at Vaoala on 30 April 2026 where \$300 was given to Tualagi Telima Leaupepe a registered voter of Vaimauga 3 with the intent to corruptly induce him to vote for the Respondent.

#### **The Opposition and Counter Petition**

26. In response, the Respondent filed a Notice of Counter Allegation against the Petitioner, dated and filed on 6 May 2026. The *notice of counter allegation* was advertised on 22 May 2026. In response to the petition, the Respondent denies all allegations of corrupt practices.
27. The *notice of counter allegation* also sets out allegations of corrupt practices said to have been committed by the Petitioner. Before the end of the evidence, leave was granted by the Court for the Respondent to withdraw allegation 2 of bribery and the sole allegation of treating. These two allegations were accordingly dismissed. The remaining allegations against the Petitioner include:
- (a) Allegation 1: On 29 April 2026 at the Taumeasina Island Resort in Moataa, \$100 was given by the Petitioner to Elisapeta Elise of Malololelei for the purpose of inducing her to vote;
  - (b) Allegation 3: On or between 1 February and 31 March 2026, at the EFKS Vaoala Hall, the Petitioner presented \$2,000 to a group of voters of Vaoala as a bribe;
  - (c) Allegation 4: On a date in March 2026, at Malololelei, the Petitioner presented \$1,500 to a group of voters of Malololelei as a bribe; and
  - (d) Allegation 5: On 25 April 2026, at Magiagi, the Petitioner caused to be paid to Tiimalu Pito Aimoa \$300 as a bribe.

28. The *notice of counter allegation* further alleges that the above acts were either done by the Petitioner or on his behalf for the purpose of corruptly influencing or inducing people to vote for the Petitioner or procure the election of the Petitioner at the 2026 by-elections of the Vaimauga 3 Constituency.

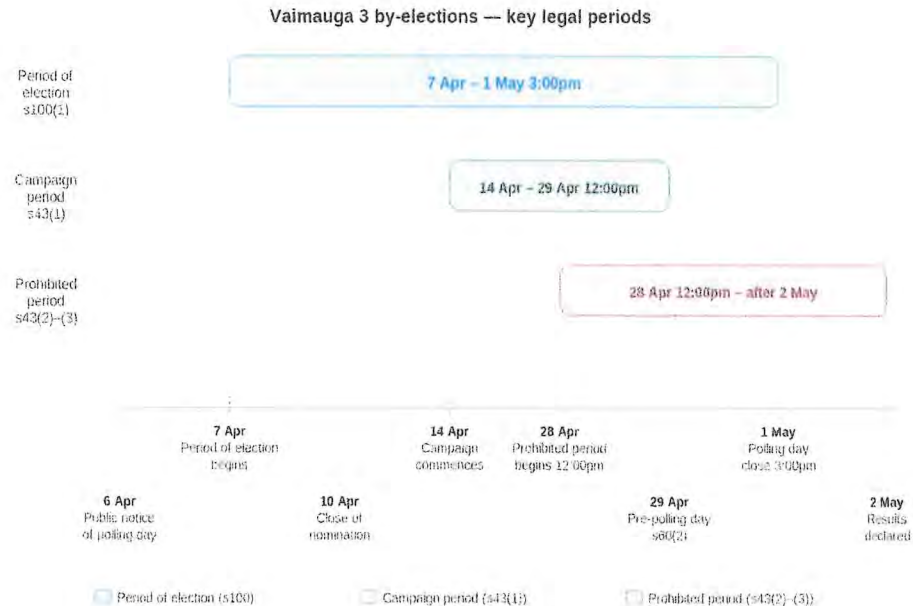
#### THE LAW:

##### **The campaign period, prohibition period and period of election**

29. The campaign period and prohibition period is explained in s43 of the EA 2019:
43. Commencement and cut-off date for campaigns: (1) Subject to subsection (2), the campaigning period commences within 3 days after the close of nomination.  
(2) A candidate is prohibited from campaigning during the prohibited period.  
(3) In this section, “prohibited period” commences at 12.00pm on the day before the designated period in section 60(2) and ending after the official declaration of results.
30. S60(2) of the EA 2019 provides for the designated day to trigger the prohibited period as the pre-polling day. Wednesday, 29 April 2026 was designated as the pre-polling day for the Vaimauga 3 by-elections. This means that *the prohibited period* in s43 for the purposes of the by-elections for Vaimauga 3 commenced on Tuesday, 28 April at 12.00pm and ended after 2 May 2026.
31. The close of nomination was on Friday 10 April 2026. *The campaign period* would therefore commence three days after that date on Tuesday, 14 April 2026 up until the commencement of the prohibited period on Tuesday 28 April 2026 at 12.00pm.
32. It is noted that s42 of the EA 2019 provides for the approved method of campaign. It allows handing out pamphlets, the use of billboards or oral or filmed presentations or speeches using any mode of communication available including electronic devices.
33. The period of election is defined in s100(1) of the EA 2019:
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.

(4) Despite subsections (2) and (3) it is not an illegal practice if the act referred to under those subsections is carried out at a funeral.

34. The Commissioner gave public notice of polling day on Monday, 6 April 2026. The polling day was on 1 May 2026 and closed at 3.00pm. The ‘*period of election*’ therefore commenced on Tuesday, 7 April 2026 until 3.00pm on Friday, 1 May 2026.
35. A diagram is provided to illustrate the different periods and where they overlap.



36. Section 100(2) of the EA 2019 explains what is allowed and what is prohibited by the candidate during the “period of election”. Prohibited during this period is the giving of food, beverages, money or other valuable to a voter at a ceremony or activity. A candidate is guilty of illegal practice if he directly or indirectly in person or through another person carries out the above acts.
37. The only exception applies to funerals<sup>2</sup>, *o’o* and *momoli*<sup>3</sup>, and *tautua fa’aauau*<sup>4</sup>. *O’o* and *momoli* can be conducted within a three year period after the date the results of the general elections was declared.<sup>5</sup> However, with the exception to service given to *faifeau*, the law prohibits all *tautua fa’aauau* within 90 days of polling day.<sup>6</sup> Working backward from the 1 May 2026 polling date, the 90-day restriction period would have begun on 30 January 2026, meaning any such activity after that date up until 1 May 2026 would be classified as illegal.

<sup>2</sup> EA 2019, 100(4)

<sup>3</sup> EA 2019, 101

<sup>4</sup> EA 2019, 102

<sup>5</sup> EA 2019, s101. Note, the results of the General Elections in 2025 was declared on 6 September 2025. The return of writ signed by the Head of State was dated 8 September 2025.

<sup>6</sup> EA 2019, 102(3)

38. The fact that polling day was not formally declared until 6 April 2026 does not change this. Once that declaration was made, its legal effect reached back to the start of the 90-day period: it rendered unlawful any *tautua fa'aauau* carried out between 30 January 2026 and 6 April 2026, even though, at the time those acts were carried out, no formal declaration had yet been made.
39. In accordance with *Posala v Su'a* [2006] WSSC 29 (16 August 2006)<sup>7</sup> as applied in *Leota v Lauofo* [2021] WSSC 36 (21 July 2021), the applicable test is one of strict liability. If a person is found to have committed any of the prohibited acts within the relevant period, then that act is automatically classified as an ***illegal activity***, regardless of intent or knowledge.<sup>8</sup>

### **Corrupt practice**

40. According to s94(1), EA 2019, a person is guilty of corrupt practice who commits...(a)...(b)...(c) bribery. In subsection (2), a person is also guilty of corrupt practice if he or she aids, abets, counsels, or obtains the commission of any offence in subsection (1).

### **Bribery**

41. The allegations in the petition and notice of counter allegations are acts of bribery. Section 96, EA 2019 outlines the law as it pertains to bribery. A number of categories are listed which all amount to bribery. Relevant to the allegations of this matter is the giving of money or a gift in order to induce voters to vote in a particular manner.
42. As stated in *Petaia v Pa'u* [2006] WSSC 1 (04 December 2006):

“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.”<sup>9</sup>

<sup>7</sup> *Posala v Su'a* [2006] WSSC 29 (16 August 2006), para 123-127.

<sup>8</sup> *Leota v Lauofo* [2021] WSSC 36 (21 July 2021), para 59 – 61.

<sup>9</sup> Applied in *Tafili v Peto* [2021] WSSC 30 (25 June 2021), *Leota v Lauofo* [2021] WSSC 36 (21 July 2021), *Timani v Vaai* [2023] WSSC 20 (12 May 2023).

43. 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."<sup>10</sup>

44. As stated in *Posala v Sua* [2006] WSSC 29 (16 August 2006) at [23]:

"For a bribery prosecution to succeed the prosecution must be able to prove beyond reasonable doubt that the act of the accused person or the act of any person on his behalf was done with a corrupt intention. If the prosecutor fails to prove this beyond reasonable doubt the accused person will be found not guilty.

An intention can never be proved as a fact; it can only be inferred from facts proven beyond a reasonable doubt."<sup>11</sup>

45. The meaning of this observation was further discussed in *Vui v Ah Chong* [2006] WSSC 52 (26 September 2006):

"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. Often in this context, action speaks louder than words"

46. The Court in *Posini v Fuimaono* [2025] WSSC 108 (27 November 2025) at [80] summarizes the law relating to the question of mixed motives. They refer to the cases of *Vui v Ah Chong* [2006] WSSC 52, *Rogers on Elections* 20th ed, *Ah Him v Amosa* [2001] WSSC 16, *Re Mitiaro Election Petition* [1979] 1 NZLR S1, *Pokoati v Tetava* [1978] CKHC 2 and *DPP v Luft* [1979] 2 All ER 569. They agreed with the approach in *Avauli v Atiifale* [2021] WSSC 39 where it was succinctly stated:

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<sup>10</sup> Applied in *Tafili v Peto* [2021] WSSC 30 (25 June 2021), *Timani v Vaai* [2023] WSSC 20 (12 May 2023)

<sup>11</sup> *Posala v Su'a* [2006] WSSC 29 (16 August 2006), para 23.

“The question of mixed motives is considered in *Rogers on Elections* where one motive is charity or kindness and the other popularity or corruption; the question is which is the governing or dominant motive. The issue was put to the rest by Lord Diplock in *D.P.P v Luft* [1979] 2 All ER 569, 574:

“To speak of a dominant intention suggests that a desire to achieve one particular purpose can alone be causative of human actions, whereas so many human actions are prompted by a desire to kill two birds with one stone. For my part I prefer to omit the adjective ‘dominant’.”

On the authority of *D.P.P v Luft*, it appears so long as one of the purposes of the relevant act was to promote the election of the candidate, that is sufficient to prove the intention required for corrupt practice in terms of the Electoral Act. The dominant intention test is therefore rejected as was done by this Court in *Ah Him v Amosa* and by Donne CJ in *Re Mitiaro Election Petition*.” (again, the emphasis is ours)

#### Agency

47. What constitutes agency has been considered in several decisions of this court. In *Olaf v Chan Chui* [2001] WSSC 18 (31 May 2001), it was said:

“It is settled law that entrusting to an agent by a candidate of the acts to be done to promote the election of the candidate may neither be in express terms nor arise by implication. It is not necessary in order to prove agency to show that the person was actually appointed. Recognition and acceptance of service is also sufficient to prove agency.”

48. The Court in *Olaf v Chan Chui* [2001] WSSC 18 (31 May 2001) also stated:

“In *Tupuola Sola Siaosi v Tofaeono Anufesaina (Siumu Constituency)*, the Court cited with approval as the correct statement of the law the principles stated by Hosking J in *Re Bay of Islands Election Petition* (1915) NZLR 578, which is that a candidate, however innocent, would be liable and responsible for any illegal acts done by or under the authority of his agent in the sense that the election will be avoided. It makes no difference whether the candidate did not authorise, did not know, or had not consented to the doing of the illegal act. In fact even if the agent acted illegally in defiance of express instructions to the contrary from the candidate, the election of the candidate will be avoided.<sup>12</sup>

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<sup>12</sup> Applied in *Kasimani v Seuala* [2011] WSSC 87 (8 August 2011) at [36].

49. This approach is consistent with the spirit of the legislation that elections should be conducted by honest and proper means and untainted by underhand influences.

### **O'o and Momoli**

50. Although we have addressed this part briefly above, we set out hereunder the full section for further discussion when addressing the counter allegations.

“101. Conduct of O'o and Momoli:

Despite this Act, the presentation of the traditional O'o and Momoli by a candidate or Member or a candidate's or Member's representative respectively to a village or a constituency is not considered as treating, bribery or an illegal or corrupt activity if it is presented within 3 years after the date of the declaration of results for a general election.”

### **Void of Election**

51. Of relevance also is section 116 which provides:

"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."

### **Standard of Proof**

52. The onus of proving the allegations made in the election petition lies with the Petitioner. The required standard of proof is the criminal standard which is proof beyond reasonable doubt. The same standard applies to the Respondent when proving the counter allegations.

## **ALLEGATIONS BY THE PETITIONER**

53. We will deal with the allegations in the Petition in accordance with the locations where bribery was alleged to have been committed.

### **Allegations (i), (ii), (iii) & (iv) of bribery, 20 April 2026 - Maota of Lealasola or Namulauulu at Leone.**

54. Haloseta Lavea, Gabrielle Tapumanaia, Vitolia Tapumanaia and Asofa Tapumanaia gave evidence for the Petitioner in support of the allegations. Pa'o Savali Safuneituuga, Tiimalu Pito Ainoa and the Respondent gave evidence in rebuttal. It is conceded that all of the above witnesses are registered voters in the electoral constituency of Vaimauga 3.
55. It is not disputed that on 20 April 2026 the Respondent convened a meeting with registered voters at the maota of Lealasola, also known as the maota of Namulauulu, in Leone. Attendance was estimated between 20 and 40 persons, most being members of the Lealasola family. The Respondent addressed the gathering on constituency and election matters, responded to questions, and the meeting lasted approximately one and a half to two hours.

56. The evidence is that towards the conclusion of the meeting, the Respondent requested attendees to turn off their phones. He thanked those in attendance, produced an envelope, and placed it on the table. Witnesses are consistent with what he stated as a minimum: *“o le tupe mo le tou taumafataga”* (“this is money for your refreshments”).
57. The Petitioner’s witnesses testified that the instruction to turn off phones signaled the Respondent’s intention to prevent recording of conduct he knew to be improper. The Respondent, however, explained that his purpose was to avoid footage being taken out of context and circulated on TikTok, potentially harming his reputation and that of his family. He maintained the request was protective rather than concealment of wrongdoing.
58. After the Respondent’s departure, the envelope was opened and found to contain ST\$500. The money was distributed among those present. The Petitioner’s witnesses reported receiving small sums: Gabrielle Tapumanaia ST\$10, Vitolia Tapumanaia ST\$20, and Asofa Tapumanaia ST\$20. Pa’o Savali Safuneituuga, a witness for the Respondent, confirmed receiving ST\$100 together with Haloseta Lavea, which they divided between themselves.
59. There are discrepancies as to what the Respondent said when he gave the money. Gabrielle testified that he stated:  
*“Ia e na o se seleni faatauva e tuu mai e fai ai se taumafataga ona lea e faasa le faatosina”* (“this is just a small token given for refreshments, as bribery is now prohibited”).
60. The Respondent’s own witness, Tiumalu Pito Ainoa agrees that the Respondent said a similar statement:  
*“Ona o lea e loma le palota ma e faasa faatosina, ma oute lei sau e faatosina le tatou aiga. Ae oute vaai i le maota lea tatou te faaogaina. O lea e tuuina atu ai le seleni mo le maota ma se taumafataga”*.
61. Asofa Tapumanaia further gave evidence that he observed the Respondent giving money to his cousins at the vehicle, whereupon he approached the Respondent, shook his hand, and received ST\$50.00.
62. The Respondent denies having said *“E le o se faatosina”* (“this is not a bribe”) when producing the envelope, a denial corroborated by Pa’o Savili Safuneituuga. He also denies giving money to Asofa or any other person at the vehicle before leaving. He maintained that throughout his presentation he told those present:  
*“Ou te le sau e tauanauina lau palota”* (“I have not come to influence your vote”) and *“E pule oe i lau palota o lau lava lea filifiliga saoloto”* (“the choice of your vote is entirely your own free choice”).
63. Haloseta’s testimony corroborates the Respondent’s account, while the other three Petitioner witnesses either denied or could not recall the Respondent say these words. The Respondent asserts that the ST\$500 was intended both to

provide refreshments, which had not been prepared, and as a gesture of gratitude for the use of the maota. It was a culturally appropriate gift, given in accordance with the practice of *fa'aaloalo i le fa'aaloalo* (reciprocal respect). This interpretation was also supported and confirmed by Pa'o Savili Safuneituuga.

64. The Petitioner contends that the payment amounted to bribery, designed to entice voters to support the Respondent. Gabrielle, Vitolia, and Asofa gave evidence consistent with this position.

***Was it an Illegal Activity?***

65. The Court has extensive inquisitorial power under ss115(4) and 115(6)(a) of the EA 2019 to review not only corrupt practices but also illegal practices.
66. The meeting at the maota of Lealasola on 20 April 2026 occurred during the campaign period. The Respondent's attendance and his addressing of voters were not in issue. However, the date fell within the statutory period of election, during which the giving of money or gifts to voters is prohibited irrespective of intent. As the ST\$500 was given on 20 April 2026, we find the act constituted an illegal activity under s100(2) of the EA 2019, applying the strict liability principle confirmed in *Posala v Sua* [2006] WSSC 29 (16 August 2006) and *Leota v Lauofo* [2021] WSSC 36 (21 July 2021).
67. When asked about his knowledge of s100 of the Electoral Act 2019, the Respondent indicated he was unaware of the specific provision, though he had earlier acknowledged a general familiarity with the law and expressed that he would not wish to act contrary to it. Whether or not the Respondent was aware of the precise terms of s100, ignorance of the law does not provide a defence to the strict liability finding already made above.

***Was it Bribery?***

68. The finding of illegality does not, of itself, establish bribery. Bribery requires proof beyond reasonable doubt that the Respondent acted with corrupt intent, that the payment was made to induce or reward a vote rather than for a genuine customary purpose.
69. The payment was made in cash. Although the Respondent asserted that distribution was a matter for the matai of Lealasola, and witnesses agreed it was distributed by Viliamu, we are satisfied the Respondent knew the money would be shared among those present, including registered voters.
70. The Respondent has stated that the payment was genuinely made in accordance with the customary practice of *fa'aaloalo i le fa'aaloalo* (reciprocal respect), as gratitude for the use of the maota and to cover refreshments. The critical issue is whether the Respondent by giving the \$500 also intended to induce registered voters Haloseta, Gabrielle, Vitolia and Asofa to vote for him.
71. Gabrielle and Tiumalu testified that the Respondent referred to bribery being prohibited, which could be interpreted either as a denial of corrupt intent or as submitted by the Petitioner, an attempt to disguise it. The Respondent's

account, that he expressly told those present he had not come to influence their vote was corroborated by Haloseta, an independent witness called by the Petitioner. We accept this corroboration as genuine and find that these words were indeed spoken.

72. However, those words must be assessed subjectively against the Respondent's conduct as a whole. The law on mixed motives is well settled." As summarized earlier *Posini v Fuimaono* [2025] WSSC 108, adopted the reasoning of Lord Diplock in *DPP v Luft* [1979] 2 All ER 569 as confirmed in *Avauli v Atiifale* [2021] WSSC 39. It is sufficient that one of the purposes of the giving was to induce registered voters to vote for the Respondent.
73. In assessing the totality of the circumstances, we are guided by the approach taken in *Ah Him v Amosa* [2001] WSSC 16, where the Court cautioned that:

"it would be unrealistic to view a payment in isolation, divorced from the context in which it was made."
74. We are not unmindful of what the Respondent has said. His assertion that the ST\$500 reflected the customary practice of *fa'aaloalo i le fa'aaloalo* is not without foundation, and Haloseta's corroboration that he stated he had not come to influence votes has been accepted as genuine. We have given those matters due weight. However, the Respondent's primary purpose in attending was to campaign and secure voter support, which sits uneasily alongside his stated disclaimer. His attendance to campaign and his words disclaiming influence are, on their face, difficult to reconcile.
75. More telling is what occurred at the conclusion of the meeting. The Respondent instructed attendees to turn off their phones immediately before producing the envelope of cash. If the gift was purely a customary gesture, there was no reason to prevent its recording. The explanation offered, concern about TikTok misuse, is unpersuasive given that no such request was made at the outset of his meeting when campaigning was openly underway. The timing of the gift, eleven days before the by-election, and the Respondent's own acknowledgment that bribery was prohibited, further bear on our assessment of his state of mind. These circumstances, considered together, lead us to conclude that the Respondent was conscious that giving money to voters at that time was prohibited and took deliberate steps to avoid it being documented.
76. Despite any genuine customary purpose which may also have been present, we are satisfied beyond reasonable doubt that one of the purposes of the ST\$500 was to induce registered voters Haloseta, Gabrielle, Vitolia, and Asofa to vote for the Respondent.
77. As to the separate ST\$50 which Asofa said was given to him by the Respondent at his vehicle, we are not satisfied this has been proven to the necessary threshold. The allegation is not pleaded in the petition, and Haloseta's account of events following the Respondent's departure conflicts with Asofa's version. The Respondent denies it. This allegation is accordingly rejected.

78. Accordingly, we only find that the giving of ST\$500 on 20 April 2026 by the Respondent at the maota of Lealasola and which was distributed to voters Haloseta, Gabrielle, Vitolia and Asofa was both an illegal activity and given with corrupt intent, amounting to bribery.
79. The Court is therefore satisfied that the Petitioner has proven beyond reasonable doubt, the allegations of corrupt practice of bribery against the Respondent outlined in allegations (i), (ii), (iii), and (iv) of the petition.

**Allegations (v), (vi) and (vii) of bribery, 20 April 2026 - Maota of Leaulmoana at Leone.**

80. The Petitioner relies on the evidence of Miriama Liaina, Alamai Fetu, and Tiresa Leaulmoana. The Respondent and Pa'o Savali Safuneituuga gave evidence in rebuttal. It is accepted that all these witnesses are registered voters in the constituency of Vaimauga 3.
81. The events at this meeting mirror those at the maota of Lealasola. On or shortly after 20 April 2026, the Respondent attended a meeting at the maota of Leaulmoana in Leone, convened at the request of Pa'o Savali Safuneituuga following the earlier gathering at Lealasola.
82. The Respondent spoke on constituency and election issues and answered questions. Towards the conclusion, he again asked attendees to turn off their phones, thanked them for receiving him, and placed an envelope on the table, stating: "*na o se seleni faatauvaa e fai ai le taumafataga o le tatou aiga*" ("this is just a small token for our family's refreshments"). He then departed.
83. The Petitioner's witnesses confirmed the Respondent said the money was for refreshments, not for the use of the maota. They deny, or cannot recall, him saying "*Ou te le sau e tauanaina lau palota*" ("I have not come to influence your vote") or "*E pule oe i lau palota o lau lava lea filifiliga saoloto*" ("the choice of your vote is entirely your own free choice"). Miriama testified that the money was distributed under Leaulmoana's direction, with her receiving ST\$20, and Alamai and Tiresa each receiving ST\$20. All three witnesses viewed the money as intended to induce them to vote for the Respondent.
84. The Respondent maintains that he repeated the words "*Ou te le sau e tauanaina lau palota*" and "*E pule oe i lau palota o lau lava lea filifiliga saoloto*" throughout his address. He reiterated his earlier explanations, that phones were turned off to prevent misuse of recordings, and the ST\$500 was given to cover refreshments and as gratitude for the use of the maota. He argued the payment was a culturally appropriate gift in accordance with *fa'aaloalo i le fa'aaloalo* (reciprocal respect). His account was confirmed by Pa'o Savali Safuneituuga.
85. The Petitioner alleges the payment amounted to bribery, intended to entice voters to support the Respondent. Witnesses Miriama Liaina, Alamai Fetu, and Tiresa Leaulmoana support this position. Miriama further testified that the Electoral Commission had clearly publicized the prohibition on giving money,

and that other candidates who presented at Leone did not provide money or food.

***Was it an Illegal Activity?***

86. There is a dispute as to what day this meeting was held. As the meeting itself is not disputed we find that the meeting at the maota of Leaulmoana occurred on or shortly after 20 April 2026. As this date fell within the statutory period of election, the giving of ST\$500 constituted an illegal activity under s100(2) of the Electoral Act 2019.

***Was it Bribery?***

87. As with the first allegation, the finding of illegality does not of itself establish bribery. The Petitioner must again prove beyond reasonable doubt that the ST\$500 was given with the intention of inducing votes.
88. The legal framework and reasoning we applied to the Leaulmoana meeting apply equally here. The payment was made in cash, and although distribution was carried out by Leaulmoana, we are satisfied the Respondent knew the money would be shared among those present, including registered voters Miriama, Alama, and Tiresa. The Respondent again asserted the gift reflected the customary practice of *fa'aaloalo i le fa'aaloalo*. We approach that assertion in the same way as before.
89. What distinguishes this allegation is the additional weight of the evidence. The three witnesses Miriama, Alama, and Tiresa were consistent and credible in their view that the money was given to induce their vote. None of them recall the Respondent saying he had not come to influence their vote. Miriama further testified that the Electoral Commission had publicly notified that giving money during this period was prohibited, and that other candidates who campaigned at Leone did not provide money or food. We accept this evidence. It bears both on the Respondent's awareness of whether such conduct was unlawful and on the inference that the payment, where others refrained, could have been a deliberate strategy to secure electoral advantage rather than a customary gesture.
90. Critically, the Respondent again instructed those present to turn off their phones before producing the envelope. For the reasons already given, we draw the same inference. The repetition of this conduct across two consecutive meetings only reinforces it.
91. Applying the mixed motives approach in *Posini v Fuimaono* [2025] WSSC 108 as set out above, we are satisfied beyond reasonable doubt that whatever genuine customary purpose may also have been present, one of the purposes of the ST\$500 was to induce registered voters Miriama, Alama, and Tiresa to vote for the Respondent. The giving of ST\$500 at the maota of Leaulmoana was therefore both an illegal activity and given with corrupt intent, amounting to bribery.

92. The Court is satisfied that the Petitioner has proven beyond reasonable doubt the allegations of the corrupt practice of bribery as set out in allegations (v), (vi), and (vii) of the petition.

**Allegations (ix) and (x) of bribery, 20 to 24 April 2026 - Maota of Toomalatai at Matautu.**

93. The Petitioner relies on the evidence of Filifilia Avau and Leauta Lauaki. The Respondent and Matagofie Kome Feagaimalii gave evidence in rebuttal. It is accepted that all these witnesses are registered voters in the constituency of Vaimauga 3.
94. It is not disputed that the Respondent attended a meeting sometime in April 2026 at the maota of Toomalatai at Matautu Tai. The Respondent spoke about issues concerning the constituency and the elections and was open to answering questions from those present. As was the case at Leone, towards the conclusion of the meeting he thanked those present and gave an envelope to one of the matai before he left, saying, "*o le seleni lea e fai ai le taumafataga, e le o se faatosina*" ("this is just a small token for your refreshments, it is not a bribe").
95. Matagofie Kome Feagaimalii the *pulenuu* of Matautu Tai confirmed that the Respondent did say the words "*Ou te le sau e tauanauina lau palota pe fai se faatosina*" ("I have not come to influence your vote or to give a bribe") throughout his presentation. He also confirmed that he was the person who distributed the \$500 to those present. In his evidence, he agreed that the money was appropriate in the Samoan cultural context, as no food had been prepared for the meeting, and that it was an appropriate response to the use of the maota.
96. Filifilia Avau and Leauta Lauaki gave evidence that they received ST\$25 each from the ST\$500 which was distributed by Matagofie Kome. Both witnesses gave evidence that, in their view, the money was given to induce them to vote for the Respondent, even though Leauta agreed that the Respondent did say "*Ou te le sau e tauanauina lau palota*" in his address.
97. The Respondent repeats his earlier explanation for giving the \$500 at this meeting, to cover refreshments since none had been prepared, and as a gratitude payment for the use of the maota. He maintains that he gave the money openly, addressed it directly by stating it was not a bribe, and did so in accordance with the customary practice of "*o le fa'aaloalo i le fa'aaloalo*." Unlike the meetings at Leone, there is no evidence that the Respondent asked those present to turn off their phones at this meeting.
98. The Petitioner argues that the giving of the \$500 amounted to bribery intended to entice the voters present to vote for the Respondent. Witnesses Filifilia Avau and Leauta Lauaki support this position, maintaining that, regardless of what was said, the money was given for the purpose of inducing their vote.

***Was it an Illegal Activity?***

99. The meeting at the maota of Toomalatai took place in April 2026 at around the same time as the meetings at Leone, within the statutory period of election. For

the reasons already canvassed, the giving of the \$500 at this meeting was an illegal activity under s100(2) of the EA 2019.

***Was it Bribery?***

100. As with the previous allegations, the finding of illegality does not establish bribery. The Petitioner must prove beyond reasonable doubt that the ST\$500 was given with the intention of inducing votes rather than for a genuine customary purpose.
101. The payment was again made in cash, and although distribution was carried out by Matagofie Kome, we are satisfied the Respondent knew the money would be shared among those present, including registered voters Filifilia and Leaauta. The Respondent again relied upon the customary practice of *fa'aaloalo i le fa'aaloalo* as his explanation. We approach that assertion as we have done before.
102. This meeting does, however, differ from those at Leone in two respects. There is no evidence that the Respondent asked attendees to turn off their phones before producing the envelope. Further, both Matagofie and Leaauta confirmed that the Respondent said words to the effect that he had not come to influence their vote, and we accept those words were spoken. These are matters we have taken into account.
103. Nonetheless, the fact that those words were spoken does not, of itself, determine intent. The meeting was a campaign initiative taking place within days of the by-election, during a period when the prohibition on giving money to voters was publicly advertised. The repetition of cash payments across three consecutive meetings involving registered voters during the restricted period is more consistent with deliberate inducement than with customary practice. Critically, both Filifilia and Leaauta testified that the payment was intended to induce their vote. Leaauta maintained this view notwithstanding her acceptance that the disclaimer by the Respondent was spoken, demonstrating that the words did not dispel the understanding that the payment was connected to the election.
104. Applying the mixed motives approach as set out above, and having regard to the consistent pattern of conduct across all three meetings, we are satisfied beyond reasonable doubt that one of the purposes of the ST\$500 was to induce registered voters Filifilia and Leaauta to vote for the Respondent. The giving of ST\$500 at the maota of Toomalatai was therefore both an illegal activity and given with corrupt intent, amounting to bribery.
105. The Court is satisfied that the Petitioner has proven beyond reasonable doubt the allegations of the corrupt practice of bribery against the Respondent in relation to this meeting.

**Allegation (viii) of bribery, 30 April 2026 at Vaoala**

106. Tualagi Telima Leaupepe testified that on 30 April 2026 the Respondent visited his home at Vaoala. There was a brief exchange between the Respondent and Amulia, Tualagi's daughter before Tualagi stepped in and told the Respondent

his children would vote for him but that he and his daughter would vote FAST. The Respondent thanked him, dropped ST\$200 beside him, and left. Tualagi later counted two \$100 notes.

107. His daughter Amulia corroborated the account, stating she saw the Respondent drop money before leaving and considered this to be bribery, given the by-election was the following day.
108. In cross-examination, Tualagi accepted he is related to the Respondent and had previously received money from him during his tenure as Minister of Finance. But only on three occasions and only at his office. He also acknowledged asking to speak with the Respondent at his campaign meeting held at the Vaoala EFKS Hall on 25 April 2026.
109. The Respondent does not dispute the visit to Tualagi's residence on the eve of the by-elections. This was his second visit to Tualagi's residence in April 2026. He said he attended because of Tualagi's earlier request made at the Vaoala EFKS Hall, and that the family relationship made the visit appropriate. He confirmed giving ST\$200 but maintained it was not connected to voting and recalled saying to Tualagi, "*e le ave'a mea nei o palota e afaina ai le tatou aiga*" ("these election matters should not harm our family relationship"). He admits that the last time he gave money to Tualagi was before the general elections in August 2025 whilst he was still the Minister of Finance.

#### ***Was it an Illegal Activity?***

110. The visit took place on 30 April 2026, the day preceding the by-election on 1 May 2026, within the statutory period of election and prohibition period. For the reasons given earlier in this decision, the giving of \$200.00 was an illegal activity under s100(2) of the EA 2019.

#### ***Was it Bribery?***

111. Illegality alone does not establish bribery. The Petitioner must prove, beyond reasonable doubt, that the payment was made with corrupt intent. Unlike the other allegations, this payment was made privately to one individual.
112. The timing and sequence of events are decisive. The payment was made on the eve of the by-election during the prohibition period, immediately after Tualagi disclosed that he and his daughter would not be voting for the Respondent. On the Respondent's own evidence, he responded to that disclosure by reassuring Tualagi that it would not affect their family relationship, and only then handed over the money. No equivalent payment was made at the earlier visit.
113. While the visit itself had a legitimate pre-arranged purpose, the giving of money was a distinct act, occurring at a specific moment and in a specific context, and it is that act which falls to be assessed subjectively for corrupt intent.
114. The Respondent's explanation that the payment to Tualagi was made simply out of family obligation is one we approach with caution. On the evidence, the only previous occasions on which the Respondent had given money to Tualagi were

during his tenure as Minister of Finance, in a wholly different context. The most recent prior payment was in August 2025. The giving of money to a family member who is also a registered voter, on the eve of polling day, in a private setting, calls for careful scrutiny notwithstanding the familial relationship.

115. The question of mixed motives is engaged here as it was in the earlier allegations. Even accepting that some element of family obligation may have been present, that does not preclude a concurrent intention to induce. As we have already stated, it is sufficient that one of the purposes of the gift was to induce the Respondent's vote or the votes of his children. We apply that principle here.
116. We also note that even if the gift is characterised as arising from a customary obligation to relatives, it would fall within the definition of *tautua faaauau*. The EA 2019 expressly prohibits the giving of money or gifts to voters on that basis within 90 days of polling. The payment was made on the eve of polling day, well within that period. The customary explanation therefore finds no safe harbour in law.
117. In assessing the totality of the circumstances, we are again guided by the caution stated in *Ah Him v Amosa [2001] WSSC 16* as stated earlier.
118. It is the surrounding circumstances as a whole not any single factor that must inform the Court's subjective assessment of intent. Viewed in that light, the prohibition period, the private setting of the payment, the sum involved, the timing on the eve of polling, the absence of any prior pattern of giving money to Tualagi outside of a Ministerial context at his office, and the immediate proximity between Tualagi's stated refusal to support the Respondent and the payment that followed, collectively point to a purpose that extends beyond family obligation.
119. Notwithstanding any familial duty which may also have been present, we are satisfied beyond reasonable doubt that one of the purposes of the ST\$200 was to induce his vote, or the votes of his children, or to mitigate the consequence of his stated refusal to support the Respondent.
120. Accordingly, we find that the giving of ST\$200 to Tualagi Telima Leaupepe at Vaoala on 30 April 2026 was both an illegal activity and given with corrupt intent, amounting to bribery.

#### **Result of the Petition**

121. We find that allegations (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) (xi) and (x) by the Petitioner against the Respondent have been proven beyond a reasonable doubt.
122. We also find the Respondent guilty of illegal practice pursuant to s100(2) of the EA 2019 in relation to the money given at Leone at the maota of Lealasola and the maota of Leauomoana, the maota of Toomalatai at Matautu Tai and to Tualagi Telima Leaupepe at Vaoala.

## NOTICE OF COUNTER ALLEGATIONS BY THE RESPONDENT

123. The allegations will be separated into three parts:
- (a) Allegation 1: On 29 April 2026, the Petitioner gave \$100 to Elisapeta Elise at Taumeasina for the purpose of inducing her to vote;
  - (b) Allegation 3 & 4: On a date between 1 February and 31 March 2026, The Petitioner gave \$2,000 to a group of voters at EFKS Vaoala Hall as a bribe; and on a date in March 2026, the Petitioner gave \$1,500 to a group of voters of Malololelei as a bribe; and
  - (c) Allegation 5: On 25 April 2026 at Magiagi, the Petitioner caused to be paid to Tiumalu Pito Ainoa \$300 as a bribe.

**Allegation 1: On 29 April 2026, the Petitioner gave ST\$100 to Elisapeta Elise at Taumeasina for the purpose of inducing her to vote**

124. The allegation advanced by the Respondent is one of bribery. The sole witness called in support was Elisapeta Elise, a registered voter in the Vaimauga 3 constituency. The Petitioner gave evidence in rebuttal.
125. Elisapeta testified that she resides in Malololelei and is employed as a clerk assistant in the Sales and Marketing Division of the Samoa Tourism Authority (“STA”).
126. On 29 April 2026, STA hosted the opening ceremony of the Samoa Tourism Exchange at the Taumeasina Hotel, Moataa. Ms. Elisapeta attended in an official capacity.
127. She stated that she observed the Petitioner at the event with his wife. She was familiar with him through his Tour Guide company. According to her, after the Minister of Tourism’s speech, guests were invited to view stalls and booths set up in the tents while dinner and drinks were being served.
128. Elisapeta’s evidence was that while she stood at one of the stalls, the Petitioner approached, exchanged pleasantries, and shook her hand. She testified that during the handshake, he placed ST\$100 in her hand, saying “*Avatu le mea lena e faatau ai sau mea inu. Tautuana le palota*” (“that is for you to buy a drink, remember the elections”), before walking away.
129. She further stated that although they knew of each other, they did not normally converse, and this was the first occasion he had given her money. She alleged that the Petitioner was aware she was a voter in Vaimauga 3 having met him at a village meeting at Malololelei earlier in the year where he presented ST\$1500. She was adamant the ST\$100 was intended to induce her vote in the by-election scheduled two days later.
130. The Petitioner acknowledged attending the ceremony as a business owner but denied giving money to Elisapeta. He stated that he recognised her only by face, not by name, and did not recall meeting her at Malololelei. He further testified

that although he recalled seeing her at the event, he did not remember meeting her. He did concede it was possible she was among the many who greeted him. He denied carrying cash, explaining that his wallet was kept in his wife's bag.

131. The Petitioner also argued that it would have been implausible to hand over money in a crowded public setting without being observed. He disputed Elisapeta's account of stalls and booths at Taumeasina, asserting that such displays were prepared at Apia Park for the following day. He maintained that only round dinner tables and cocktail tables were set up at Taumeasina.
132. Elisapeta's evidence under cross-examination contained some inconsistencies. For example, her affidavit stated the incident occurred right after the Minister's speech while awaiting dinner, and the stalls and booths were inside the tents. Yet in oral testimony, she claimed the stalls were outside, in a dimly lit area which was less crowded as guests were heading into the tent.
133. Despite those inconsistencies, she was firm that she received ST\$100 from the Petitioner. We observed her demeanor and found her a credible witness. We cannot also find any reason for her to fabricate her testimony other than to tell the truth of what happened.
134. We find the Respondent has proven beyond reasonable doubt that the Petitioner gave ST\$100 to Elisapeta for the purpose of inducing her vote.

**Allegation 3: On a date between 1 February and 31 March 2026, The Petitioner gave \$2,000 to a group of voters at EFKS Vaoala Hall as a bribe; (and)**

**Allegation 4: On a date in March 2026, the Petitioner gave \$1,500 to a group of voters of Malololelei as a bribe**

135. Allegations 3 and 4 of the counter allegations will be dealt with together.
136. The Petitioner admits making the payments to Vaoala, Malololelei as well as a payment at Leone. The sole question is whether those payments were made with corrupt intent or whether, as the Petitioner contends, they constituted legitimate customary *o'o* presentations protected under section 101 of the Electoral Act 2019.
137. The Petitioner deposes that prior to the 2025 general elections he had promised all 24 villages in his constituency that he would return to thank them regardless of the outcome, and that his 2026 visits fulfilled that promise. He concedes he did not use the word *o'o* but maintains that under Samoan custom, the act of returning to give thanks accompanied by a monetary gift is, of itself, the very definition of an *o'o*.
138. The Court approaches this account with considerable caution. The claim that a prior promise was made was specifically denied by Elisapeta Elise from Malololelei and Pa'o Savali Safuneituuga from Leone under cross-examination. Elisapeta's account is that the Petitioner only said these words when he visited their village after the general elections and before the by-elections early this

year when he presented the \$1,500. In her words he said "*Pe oute malo pe oute le malo oute oo mai lava*" immediately before presenting the \$1,500. The Court therefore cannot accept that those villages understood the payments as the fulfilment of any earlier customary undertaking.

139. The evidence of the Respondent's witnesses who were present at Vaoala is consistent and credible. Futi Semisi, Galumalemana Ruta, and Laulu Oliva each testified that the Petitioner did not describe the monetary gift as his *o'o*. Futi Semisi confirmed that when he was contacted by the Petitioner to arrange the meeting he said that it was to explain the \$150 government grant. When the money was presented he did not say it was an *o'o*. Galumalemana Ruta recalled him stating the money was his personal gift and not funds from the *Fono Faavae*. Laulu Oliva confirmed the Petitioner asked for the village's continuing support and told those present to "distribute it for yourselves."
140. Elisapeta Elise and Pa'o Savali Safuneituuga gave materially similar evidence in relation to Malololelei and Leone respectively. Both witnesses were not persuaded that what they received was a customary expression of gratitude for support given at the 2025 general elections.
141. The surrounding circumstances further undermine the Petitioner's account. By January 2026, the Petitioner was already confronting his political dilemma due to pressure from the HRPP caucus for him to toe the party line. His visits to Vaoala and Malololelei on 21 February 2026 occurred within two days of his formal decision to "cross the floor". He was, at all material times, the only person who knew that his resignation was imminent and that a by-election would follow. The recipients of the payments were entirely unaware of this. Several witnesses testified that the Petitioner's true purpose only became apparent to them upon learning of his resignation. This is precisely what one would expect where a payment is made with a concealed electoral purpose, and it should not diminish the weight of their evidence.
142. The Court also notes that the Petitioner did not continue visiting the remaining villages in his constituency to complete what he described as a constituency-wide tour of thanksgiving. His visits were concentrated in a selective number of villages in the weeks immediately before his resignation and then ceased. This is inconsistent with the discharge of a genuine customary obligation and is far more consistent with a calculated effort to cultivate goodwill among voters in anticipation of an election only he knew was coming.
143. The contrast with the *o'o* conducted at Magiagi in October 2025 is also telling. That presentation was made at the Petitioner's own village, at a time removed from any electoral event, and bore the hallmarks of a genuine customary occasion. The 2026 payments share none of those characteristics. They were made at meetings some arranged by the Petitioner himself, framed primarily around a \$150 Government grant, and accompanied by requests for "continuing support". Language more consistent with electoral solicitation than customary thanksgiving.

*Whether the payments constituted a traditional o'o?*

144. The Court is not satisfied that the payments were traditional *o'o* presentations. There was no prior notice that the purpose of his visit was to present his *o'o*. It was not presented as such by the Petitioner, and was not received or understood as such by the recipients who gave evidence. The manner and context of the 2026 payments departed materially from the genuine *o'o* at Magiagi. The prior promise upon which the Petitioner's customary obligation is said to rest was denied by witnesses from the very villages he claims to have been thanking. The selective and temporally concentrated pattern of giving is irreconcilable with the discharge of a genuine constituency wide customary duty.

*The Petitioner's intention?*

145. The Petitioner argues that any inference of electoral motive amounts to impermissible hindsight, constructed retrospectively from his decision to cross the floor, and that no witness heard him mention an upcoming election or solicit votes in express terms.
146. The Court rejects this submission. Corrupt intent is assessed by reference to the Petitioner's subjective state of mind at the time of giving, not by reference to what the recipients understood at that moment. It is the giver's intention, not the receiver's perception, that is determinative.<sup>13</sup> A corrupt purpose is not negated merely because the recipient did not recognise it contemporaneously. To require proof that the voter understood the corrupt intent at the time of receiving would impose a standard the law does not demand and one that would, in practice, be almost impossible to satisfy.
147. Furthermore, corrupt intent need not be declared. As the Court has consistently observed in *Ah Him v Amosa* [2001] WSSC 16 and in *Posini v Fuimaono* [2025] WSSC 108 "to consider such a presentation in isolation without having due regard to the circumstances in which it was given would be unreal."
148. When the circumstances are viewed in their totality, the inference of corrupt intent is compelling. The Petitioner was the only person who knew his resignation was imminent and that a by-election would follow. His payments to registered voters in Vaoala and Malololelei were made in the week immediately preceding that resignation. Requests for "continuing support," made alongside distributions of personal funds, cannot be characterised as the disinterested language of customary thanksgiving or "*o'o*" in those circumstances.
149. The Court finds that the payments made to the voters of Vaoala, Malololelei, in February 2026 were not customary *o'o* presentations and were not understood as such by those who received them.

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<sup>13</sup> As stated in *Posini v Fuimaono* at para 59: "However, the relevant legal test concerns the intent of the giver, not the recipients".

*Was electoral inducement an operative purpose behind the payment?*

150. As confirmed in *Avauli v Atiifale* [2021] WSSC 39 and *Posini v Fuimaono* [2025] WSSC 108, it is unnecessary to prove that electoral inducement was the dominant or sole motive. In this case, the timing of the payment and his resignation from parliament, the selective choice of villages which he visited within a reduced timeframe, the absence of accompanying *Fono Faavae officials* to explain the \$150 grant, and the Petitioner's requests for "continuing support" all point to an electoral purpose operating alongside any claimed customary intent.
151. Accordingly, the Court is satisfied beyond reasonable doubt that the payments were made, at least in part, with the purpose of cultivating electoral support in anticipation of the by-election that only the Petitioner knew was imminent.

*Alternative argument on policy considerations for s152 of the EA 2019.*

152. Counsel for the Respondent submitted that the timeframes prescribed under sections 101 and 102 of the EA 2019 should be adjusted on a purposive basis pursuant to section 152 of the EA 2019, particularly where a by-election is held before the expiry of the period permissible for carrying out an *o'o* and *momoli* and *tautua fa'aauau*. Counsel for the Petitioner opposed this, preferring a literal reading of the provisions, and submitted that resolving the argument requires recourse to the Explanatory Memorandum or Hansard records of Parliament, which are not presently before the Court.
153. The argument is novel and important, warranting careful consideration by the Court, lawmakers, and drafters alike. However, having concluded that the money presented by the Petitioner did not constitute a traditional *o'o*, it is unnecessary to address this alternative argument at the present sitting.
154. This issue would be more appropriately canvassed before the Electoral Commission once it is next convened.

**Allegation 5: \$300 given to Tiumalu at the FAST Roadshow on 25 April 2025**

155. The FAST Roadshow was held at the EFKS Hall, Magiagi, six days before polling. Organised as a campaign event for the Respondent's constituency, it drew senior political figures including the Deputy Prime Minister, Deputy Speaker, Cabinet Ministers and the Deputy Chairman of FAST. Many registered voters attended including Tiumalu Pito Ainoa. The sequence of events was captured on video tendered by the Petitioner.<sup>14</sup>
156. Proceedings opened with prayer followed by monetary presentations to clergy. ST\$500 was presented to the Reverend who conducted the service, and monetary envelopes were given to the orator Mataipule and Nonu for other church leaders who were not in attendance, two of which contained ST\$200.

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<sup>14</sup> Exhibit P.18: Affidavit of the Petitioner, Annexure A.

Mataipule then conducted the short version of the *ava o le feiloaiga* presenting the *ava oso* for the *malo usu* on behalf of the *Itumalo*. This was accepted and acknowledged by the FAST party as per customary protocol. Campaign speeches followed first by the Prime Minister through remote recording, then the Deputy Prime Minister and Deputy Chairman of the FAST party. All urged support for the Respondent, who made his own appeal to the *Itumalo* to vote for him and for the Government.

157. After the campaign proceedings, food and drinks were distributed, and customary formalities were conducted. Envelopes were presented to the visiting dignitaries by Mataipule allegedly on behalf of the *Itumalo*. Envelopes were presented for the Prime Minister, Deputy Prime Minister, Speaker and Deputy Speaker. The Petitioner confirmed in his evidence that these amounts were \$500 for the Prime Minister and \$300 each for the rest. A sum of \$5,000 was given to the FAST party and an additional \$500 gifted for the Prime Minister by a member of the audience. FAST reciprocated with structured payments totaling \$7,700 to the *Itumalo*:
  - (a) \$500 for the *ava oso*;
  - (b) \$1,000 for the *faatamalii*;
  - (c) \$2,000 as tofa for the *Itumalo*;
  - (d) \$3,000 “*E pule lava I lau fa’asoa*”;
  - (e) \$500 *lafo* for Mataipule.
158. FAST members also gifted \$200 *lafo* to a High Chief of Magiagi and \$500 to the Respondent. Tiumalu Pito Ainoa in his evidence confirmed receiving a *lafo* of \$300 from the distributed funds.
159. The Petitioner gave evidence that the *Itumalo's* own contribution was limited to the *ava oso*. The monetary presentations to the FAST party and dignitaries were financed personally by him. He confirmed that both Mataipule who presented the *ava oso* and conducted the *faaalologa* for the *Itumalo*, and Nonu who distributed the reciprocal funds, were members of his campaign committee. This was corroborated by his own witness, Vailoa Fruean.

#### **Was there Illegal Activity?**

160. The Roadshow itself was not unlawful, falling within the permitted campaign period. However, the distribution of food, drinks and money contravened s100(2) of the Electoral Act 2019, applying the strict liability principles in *Posala v Su’a* and *Leota v Lauofo*.

#### **Was There Bribery?**

161. The crucial question was whether bribery had been committed by the Petitioner or his agents or all of them together. The essential element of bribery is corrupt intent, an intention to influence the votes of electors, or to induce them to act otherwise than in accordance with their independent judgment.<sup>15</sup> Intent cannot

<sup>15</sup> *Petaia v Pa’u* [2006] WSSC 1; *Tafili v Peto* [2021] WSSC 30.

be directly proved, it must be inferred from proven facts in the way the evidence most naturally and reasonably supports.<sup>16</sup>

162. A recurring feature of election petition cases is the invocation of *fa'a Samoa* as an explanation for financial transactions that would otherwise attract scrutiny. The law's response is well-settled. Where a candidate asserts that giving was customary rather than corrupt, the question becomes one of motive. Specifically, whether a customary purpose is sufficient to displace or neutralize an electoral one.
163. We repeat again that a corrupt practice is established if electoral inducement was one of the purposes of the relevant act, even where customary purposes were also present.<sup>17</sup> For emphasis we state the following passage from *Posini v Fuimaono* [2025] WSSC 108 at [80]:

"what are called charitable gifts may be nothing more than a specious and subtle form of bribery, a pretext adopted to veil the corrupt purpose of gaining or securing the votes of the recipients. The imminence of an election is identified as a particularly important factor in determining whether conduct that might otherwise be unobjectionable has acquired a corrupt electoral character."

164. A candidate bears responsibility for the corrupt acts of agents acting on their behalf, whether by express appointment or implication. As adopted from *Olaf & Ors v Chan Chui* [2001] WSSC 18 in *Avauli v Atiifale* [2021] WSSC 39:

"A candidate however innocent would be liable and responsible for any illegal acts done by or under the authority of his agent in the sense that the election will be avoided. It makes no difference whether the candidate did not authorise, did not know, or had not consented to the doing of the illegal act."

165. Counsel for the Respondent conceded that FAST, in organising and conducting the Roadshow, acted as the Respondent's agent. Which means when the *Itumalo* presented to FAST, it was also presenting to the Petitioner as a member of FAST. Likewise, when FAST reciprocated the *faaaloaloga* from the *Itumalo*, they were doing so on behalf of the Petitioner as one of its members. However, the agency relationships extend further. Mataipule and Nonu were both members of the Petitioner's campaign committee: one conducted the *faaaloaloga* to the Fast Party, the other distributed the reciprocal funds. Neither was a neutral customary functionary. Each acted as the Petitioner's agent, and the consequences of their conduct are attributable to him accordingly.

### **The Fa'aaloaloga**

166. The Petitioner submits that the presentations to FAST dignitaries were a genuine customary obligation of the *Itumalo*, and that his involvement was simply

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<sup>16</sup> *Posala v Su'a* [2006] WSSC 29.

<sup>17</sup> *Avauli v Atiifale* [2021] WSSC 39

fulfilling that obligation on behalf of his constituency. This characterisation is unsustainable.

167. The *Itumalo's* own contribution was limited to the *ava oso*. The monetary presentations were financed personally by the Petitioner, who was aware of FAST's standard practice of reciprocal giving. A candidate who personally finances a *faaaloaloga* at a campaign event, knowing what reciprocal payments will follow, is not in the same position as a community making a genuine customary presentation. He is investing in a return. The \$7,700 distributed among constituency voters six days before polling was a foreseeable consequence of the transaction he engineered.
168. It is important to address *Timani v Vaai* [2023] WSSC 20, where the Court accepted that customary reciprocal giving at a similar FAST campaign event does not, of itself, constitute a corrupt practice. But *Timani* is factually distinct at its most fundamental level. There, the *faaaloaloga* was genuinely made by the *Itumalo*, whose gifts exceeded \$7,000, whilst FAST's reciprocal presentation of \$5,000 was substantially less. The Court was not satisfied the reciprocal payment was made with intent to induce voters. If we compare this to the current matter, the *Itumalo* contributed only the *ava oso*, while the Petitioner personal financing of the *faaaloaloga* to the FAST party generated a reciprocal return of \$7,700. The ratio of genuine customary contribution to reciprocal return is of an entirely different character. To apply *Timani* to these facts would extend it well beyond its own basis, permitting the form of customary exchange to mask a transaction fundamentally different in substance.

#### **The \$3,000 and the \$300 to Tiumalu**

169. Two payments within FAST's reciprocal presentation invite particular scrutiny.
170. The \$3,000 was presented with the words "*tuu atu I lau autafa, e pule lava i lau faasoa*", leaving distribution entirely to the recipient's discretion. Its open-ended character is consistent with money intended for broad distribution among those present, a significant proportion of whom were registered constituency voters. Custom is founded on reciprocity and the measure of reciprocity is shaped by what was given. By personally financing the *faaaloaloga* beyond the *Itumalo's* own means, the Petitioner correspondingly inflated FAST's reciprocal response. The \$3,000 is not the natural product of customary generosity, it is the fruit of his own financial intervention.
171. The \$300 *lafo* to Tiumalu, a registered constituency voter, traces its origin to the same source. Distributed by a member of the Petitioner's campaign committee at a campaign event six days before polling, its customary label cannot displace the inference that its true character was that of an electoral inducement.
172. The Petitioner argues that customary village obligation compelled him, and that failing to ensure adequate *faaaloalo* for visiting Cabinet Ministers would have exposed him to customary sanction. This cannot succeed.

173. Custom in Samoa is not a system that operates without reference to the broader legal framework. Parliamentary elections are not traditional institutions, they rest on the principle of free choice free from inducement.<sup>18</sup> A pillar of Samoa custom dictates that authority and the law is to be respected. Custom cannot override the Electoral Act, and compliance with *fa'a Samoa* is not a defence where electoral inducement was one of the purposes of the giving. As stated in *Posini v Fuimaono* [2025] WSSC 108 (27 November 2025) at [87]:

“Accordingly, the use of customary language or ceremonial framing cannot shield electoral payments from scrutiny. Candidates who cloak monetary gifts in the language of *faaaloalo* or *meaalofa*, while simultaneously seeking electoral support, run the risk of being found guilty of ‘corrupt practices’. The integrity of Samoa’s democratic institutions depends on maintaining a clear boundary between cultural practices and electoral inducement. Where that boundary overlaps – which it inevitably does in the shadow of a looming election – the Court must consider all the circumstances in order to properly assess the purposes and effect of the payment, not merely its ceremonial trappings.”<sup>19</sup>

174. Candidates who invoke customary framing to justify monetary distributions near an election:

"must do so with great circumspection and care and realise the great and real risk they are taking."<sup>20</sup>

175. The pressure of customary expectation explains the position the Petitioner found himself in, but it does not justify the course he chose.

176. Corrupt intent must be assessed by reference to all the circumstances. The following facts, viewed in their totality, converge on a single conclusion:

- (a) The timing — six days before polling — gives the transactions acute electoral significance;
- (b) The event was an overt campaign rally attended by the highest levels of FAST, colouring all financial exchanges that occurred within it;
- (c) The recipients included constituency members, among them Tiumalu a registered voter who received \$300;
- (d) Mataipule and Nonu were not neutral Itumalo representatives but members of the Petitioner's own campaign committee. The *ava oso* was initiated and conducted by one campaign committee member; the reciprocal distribution was carried out by another. Both acted as agents of the Petitioner;
- (e) The Petitioner's personal financing of the *faaaloaloga*, with knowledge of FAST's reciprocal practices, is not consistent with discharging a customary obligation in good faith. It is consistent with someone who

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<sup>18</sup> *Posini v Fuimaono* [2025] WSSC 108 (27 November 2025) para 86.

<sup>19</sup> *Ibid*, para 87.

<sup>20</sup> *Ibid*, para 86.

understood that personal financing would generate a larger customary return to constituency voters.

177. The \$3,000 gift and the \$300 lafo to Tiumalu were the direct product of the Petitioner's financial intervention, distributed through his own campaign agents to constituency voters at a campaign event. Their ceremonial labels do not alter their substance as electoral inducements.
178. Applying the mixed motives test as settled in *Posini v Fuimaono* [2025] WSSC 108 (27 November 2025) and *Avauli v Atiifale* [2021] WSSC 39, electoral inducement was one of the purposes of the Petitioner's conduct. The customary form of the transactions does not displace the inference of corrupt intent in the circumstances of this case, it reinforces it.
179. We are satisfied beyond a reasonable doubt that the Petitioner or his agents committed the corrupt practice of bribery at the FAST Roadshow.

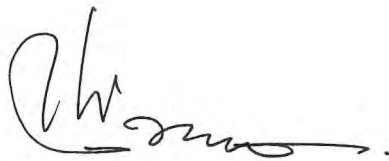
#### **Result of the counter allegations**

180. The counter allegations 1, 3, 4 and 5 of bribery against the Petitioner are proven beyond a reasonable doubt.
181. We also find the Respondent guilty of illegal practice pursuant to s100(2) of the EA 2019 in relation to the money which was given out at the Fast Roadshow at Magiagi.

#### **CONCLUSION**

182. For the reasons stated, we make the following findings:
  - (a) The allegations (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix) and (x) of bribery against the Respondent have been proven beyond a reasonable doubt;
  - (b) We also find the Respondent guilty of illegal practice pursuant to s100(2) of the EA 2019 in relation to the money given at Leone at the maota of Lealasola and maota of Leaumoana, the maota of Toomalatai at Matautu Tai and to Tualagi Telima Leaupepe at Vaoala;
  - (c) The counter allegations 1, 3, 4 and 5 of bribery against the Petitioner are proven beyond a reasonable doubt; and
  - (d) We also find the Respondent guilty of illegal practice pursuant to s100(2) in relation to the money which was given out at the Fast Roadshow at Magiagi.
183. We make the following orders:
  - (i) We find the Respondent guilty of corrupt and illegal practices as outlined herein;

- (ii) We declare the election of the Respondent void pursuant to section 116 of the EA 2019;
  - (iii) We find the Petitioner guilty of corrupt and illegal practices as outlined herein.
  - (iv) Each party to pay their own costs; and
  - (v) Security for costs paid by both parties is forfeited to the court as court costs.
184. The Court will report its finding on these and other matters it considers relevant to the Honourable Speaker accordingly.



**JUSTICE ROMA**



**JUSTICE KERSLAKE**

