

Noble Tu'ivakano v. Holani Mataiasia

Supreme Court of Tonga, Nuku'alofa

Martin J.

17 February 1987

Constitutional law – Constitution – Legislative Assembly – election – a noble's candidacy when holding an office of emolument under the Crown.

10 *Constitutional law – Constitution – interpretation – clauses 4, 59, 60, 63 – whether proviso of clause 59 is applicable to nobles.*

Noble Tu'ivakano wished to be a candidate for election as a nobles' representative. He was a civil servant and sought a declaration on the correctness of the Returning Officer's ruling that a noble holding an office of emolument under the Crown may not:

- (1) be a candidate in the election; and
- (2) may not become a representative in the Legislative Assembly.

20 Clause 65 sets out the qualifications which people's representatives must have. Its proviso states: "Provided that no person holding an office of emolument under the Crown shall enter the Assembly except the Ministers and the Governors." Tu'ivakano submitted that this proviso does not apply to nobles.

HELD: Application for declaration refused:

- (1) The Constitution does not prevent an individual who holds an office or emolument under the Crown from being a candidate in an election: *l.* 50.
- (2) On construing the relevant clauses (4 and 56 to 65), the proviso to clause 65 is applicable to nobles. The object of the proviso is to prevent paid Crown employees from being members of the Assembly. The proviso first appeared 30 in 1914 and it is presumed to have complied with clause 4: *ll.* 100 and *l.* 110.

Legislation referred to in judgment:

Constitution cls 4, 56-65

Civil Proceedings

This was an application by the plaintiff for a ruling by the Court on the correctness of the Returning Officer's ruling that a noble who is a civil servant cannot be a candidate in the elections.

MARTIN J.

Judgment:

40 This case is brought to determine certain matters relating to the election this week. With the consent of the parties I heard argument in chambers on Friday afternoon and adjourned into Court for judgment.

Noble Tu'ivakano is a civil servant. He wishes to be a candidate for election as a nobles' representative for Tongatapu. The Returning Officer has told him that because he is a civil servant he may not be a candidate, and he may not become a representative in the Legislative Assembly. I am asked to rule whether the Returning Officer is correct.

The Returning Officer has ruled that a noble who holds an office or emolument under the Crown may not be a candidate. With respect to the Returning Officer, he is clearly wrong about that. There is nothing in the Constitution to say that a noble (or indeed a commoner) who is a Crown servant cannot be a candidate. The second aspect of the Returning Officer's ruling is the real issue in this case. If elected, would such a candidate have to resign his employment to qualify to enter the Assembly?

Clause 65 of the Constitution sets out the qualifications which people's representatives must have. There follows a proviso:

Provided that no person holding an office of emolument under the Crown shall enter the Assembly except the Ministers and the Governors.

The Returning Officer says that that proviso applies to all representatives, whether for nobles or for the people. Noble Tu'ivakano argues that the proviso appears in a clause relating to people's representatives and applies only to them.

The Interpretation Act contains no relevant guidance. The Civil Law Act requires me therefore to apply the law of England with regard to the interpretation of statutes. I will come to those principles later, I will deal first with the relevant clauses in the Constitution.

Clause 60 provides: "There shall be elected by the nobles of the Kingdom from among their number 9 nobles as representatives of the nobles. . . ."

Clause 63 (2) provides:

(2) Every noble shall be competent to vote in an election for representatives of the nobles and to sit in the Assembly if chosen according to law.

That section leaves open the question whether a noble has been "chosen according to law".

Finally, clause 4 of the Constitution provides:

There shall be but one law in Tonga for Chiefs and Commoners for non-Tongans and Tongans. No laws shall be enacted for one class and not for another class but the law shall be the same for all the people of this land.

Mr Niu, for Noble Tu'ivakano, makes three points:

- (1) In spite of clause 4, the position of the nobles is different and those differences are preserved by the Constitution.
- (2) There is a very small number of nobles. If the proviso does apply to nobles the numbers from whom their representatives may be elected is even smaller.
- (3) There is specific provision for certain paid Crown servants to sit in the Assembly. These are the Ministers and Governors. Under Clause 59 of the Constitution they sit as nobles. That is necessary, he argues, to avoid the effect of the proviso. I do not agree. Ministers and Governors are specifically permitted to enter the Assembly and no more requires to be said. Also by clause 59 Ministers are required to sit in the Assembly

whatever their rank may be. The words "Who shall sit as nobles" are unnecessary to establish that. I must assume that words are not used unnecessarily. I conclude therefore that these words relate solely to their status, and have nothing to do with the proviso.

In construing a statute, I must look at the context. That means here the whole part of the Constitution which relates to the Legislative Assembly. I may also consider the purpose of the proviso. The purpose is that paid government employees should not be members of the Assembly. That can be justified on the grounds that they would be required to spend so much time in the Assembly that they would be unable to carry out their duties properly.

Ministers are in a different position. Their attendance in the Assembly does not prevent them from carrying out their duties - attendance is part of their duties.

As a matter of construction I hold that the proviso must be read with the whole of clauses 56 to 65 which deal with the creation and membership of the Legislative Assembly: and that it applies to both nobles and commoners.

Further: Clause 4 is very clear: "No law shall be enacted for one class and not for another class." I observe that these words appear in the original Constitution of Tonga. The proviso first appeared in 1914. I must presume that the proviso complied with clause 4 and did not treat commoners differently from nobles.

I accept that this application is made for entirely creditable reasons. But the fact remains that I am asked to interpret a provision in the Constitution to give to nobles an electoral privilege which commoners do not have. On principles, and particularly in view of clause 4 of the Constitution it would be wrong for me to do so.

Application for declaration is refused.

Reported by: T.K.F.