

SUPREME COURT of NAURU

Court of Disputed Returns

No. of 2016

In the Matter of the Electoral Act 2016

In the Matter of an Election in the Constituency of Boe

and

In the Matter of a Petition by Dale Cecil

PETITION

TAKE NOTICE that **Dale Cecil** of Boe District (the Petitioner) petitions the Court for an order invalidating the election in the Constituency of Boe held on 9th July 2016.

IN ACCORDANCE WITH SECTION 96 OF THE ELECTORAL ACT 2016 (The Act) the Petitioner provides the following:

FACTS

1. The Petitioner is a Nauruan Citizen over the age of 20 years and is a person qualified to vote in the Constituency of Boe.
2. That, at all material times, candidate Baron Divavesi Waqa has authorised or deliberately allowed certain undisclosed persons to erect two pieces of campaign material some meters away from the family residence, and consequently within the 200 meters of Boe Polling Station.

This is in breach of Section 120 of the Electoral Act 2016 which expressly states:

Any person who on polling day displays campaign material at any polling station or within 200 meters of any polling station commits an offence and is liable upon conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 1 year or to both.

3. That, at all material times leading up to the election date July 2016, one, Iturin Jockane of Boe District did offer his said vote or support to one such candidate, namely, Baron Divavesi Waqa, in return for a benefit.
4. That, at all material times leading up to the election date July 2016, one, Mike Dagiario of Boe District did offer his said vote or support to one such candidate, namely, Baron Divavesi Waqa, in return for a benefit.

This is in breach of Section 124 of the Electoral Act 2016 which expressly states:

(1) It is an offence for any person to offer their vote or support to a candidate for an election in exchange for any property or benefit.

(2) A person who commits an offence under subsection (1) is liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

5. That, at all material times leading up to the election dated 9 July 2016, candidate Baron Divavesi Waqa with intent to corruptly influence a voter or voters of the district of Boe did offer cash or promises or supplies food, drink or entertainment, before, on or after polling day.

This is in breach of Section 129 of the Electoral Act 2016 which expressly states:

(1) A person commits an offence and is liable upon conviction to a fine not exceeding \$5,000 or to imprisonment for a period not exceeding 1 year or to both, if with the intent to corruptly influence a voter at an election, that person:

(a) offers cash or promises or supplies food, drink or entertainment;

(b) offers or promises to give cash or to pay for food, drink or entertainment;

(c) offers or provides transport to or from polling stations

(d) offers, promises or gives a gift, donation or prize, including cash, to or for any person, club or association.

(2) For the purpose of subsection (1), it is immaterial:

(a) whether or not the offer was accepted before, on or after polling day; and

(b) whether or not a promise is fulfilled before, on or after polling day.

(3) It is on the person making the offer or promise to prove that the offer or promise was made under customary obligation.

6. The tally sheet showing the candidates and their preferences for the Constituency of Boe did not tally against the votes casted to each candidate (by rows) to that of the preferences (by columns) and there was no signature of Electoral Commissioner on the result sheet declaring the elected candidates. The tally by rows tallied but by column did not. There were discrepancies on some of the columns against the tally in the rows and therefore the Electoral Commissioner cannot declare elected candidates until such time that both the tally for the rows matches the tally for the columns. That is each row and column should tally 1505 votes casted after the informal votes were excluded.

RELIEF SOUGHT

Your Petitioner respectfully requests that the election in the Constituency of Boe be declared null and void and a new election to be called as soon as practical and be closely supervised by the Court for the reasons stated above and in particular:

- a. The unexplained failure of the Electoral Commission to tally the votes counted for Boe brings the results into question.

- b. The unlawful activities referred to in paragraphs 2 to 5 were significant breaches of the Act and should have been but was not prevented or stopped by or on behalf of the Electoral Commissioner and were so significant that the Court should hold that they had a material effect upon the election.

In the alternative your petitioner request that the elections of Baron Divavesi Waqa be declared void and that the Court declare as elected the candidate with the next greatest number of votes.

SIGNED This day of August 2016

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Dale Cecil a person qualified to vote at the election

ATTESTED this day of August 2016 by us

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A person qualified to vote at the election

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A person qualified to vote at the election