

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

EP NO 23 OF 2017

**IN THE MATTER OF A DISPUTED RETURN FOR THE ABAU OPEN
ELECTORATE**

BETWEEN

EVELE KALA
Petitioner

AND

SIR PUKA TEMU
First Respondent

AND

ELECTORAL COMMISSION
Second Respondent

Waigani: Toliken J

2017: 05th December

2018: 24th January

***PRACTICE & PROCEDURE – Election Petition – Objection to Competency
– Whether First Respondent was a candidate within Section 215 of the
Organic Law on National and Local-level Government elections –
Meaning of Candidate considered – Organic Law on National and
Local-level Government Elections, ss 3, 215.***

***PRACTICE & PROCEDURE – Election Petition – Allegations of direct as
well as indirect bribery under Section 103(a)(iii) and (d) of Criminal
Code Ch. 262 - Requirement to plead relevant and material facts
under Section 208 (a) of Organic Law discussed – Requirement to***

plead the requirement to plead specific type of bribery and its statutory basis under Section 103 (a)(iii) and (d) of the Code discussed – Organic Law on National and Level-level Government elections, ss 208(a) – Criminal Code, s 103(a)(iii) and (d).

Cases Cited:

Ebu v Evara [1983] PNGLR 201
Singirok v Fairweather (2014) NC 5577
Palme v Mel (1989) N808
Nomane v Mori [2013] N5059
Kramer v Duban (2013) N5213
Fairweather v Singirok (2013) SC1293
Biri v Ninkama [1982] PNGLR 342
Holloway v Ivarato [1988] PNGLR 99
Amet v Yama (2010) SC 1064
Apelis v Chan (1998) SC 573
Pirika v Itanu (2006) N3246
Siaguru v David Unagi and the Electoral Commissioner [1987] PNGLR 373
Vagi Mae v Jack Genia and Electoral Commission of Papua New Guinea (1992) N1105
Sinasina Open Electorate N1123
Mune v Agiru (1998) SC 590
Amet v Yama (2010) SC 1064
Nomane v Mori (2013) SC1242
Kopaol v Embel (2003) SC727
Benny Diau v Mathew Gubag (2004) SC775
Waranaka v Dusava (2009) SC980
Isoaimo v Aihi (2012) N 4921
Agonia v Karo [1992] PNGLR 463

Counsel:

Tabuchi P, for the Petitioner
Henao L with *R Puka*, for the First Respondent
Okil L, for the Second Respondent

RULING ON OBJECTION TO COMPETENCY

24th January 2017

1. **TOLIKEN J:** The Petitioner and the First Respondent were candidates for the Abau Open Electorate in the last General

elections in which the First Respondent was declared winner. The Petitioner was aggrieved by the result and filed a petition (the petition) on 30 August 2017. He challenged the result on the ground of bribery alleging two instances of direct bribery by the First Respondent and four instances of indirect bribery by agents of the First Respondent.

2. The Second Respondent, the Electoral Commission, by Notice of Motion filed x objected to the competency of the Petitioner's petition against the return of the First Respondent as Member for Abau Open in the recently concluded General Election. I heard the motion on 05th December 2017, but could not deliver my ruling due to illness. I do so now.

JURISDICTION

3. Part XVII of the *Organic Law on National and Local-level Government Elections* ("the *Organic Law*" hereafter) provides for disputed returns. Section 206 in particular provides that the validity of an election may be disputed in the National Court.

THE PETITION

4. The Petitioner alleges acts of direct as well as indirect acts of bribery by the First Respondent and his supporters in the following terms:

BRIBEY BY THE FIRST RESPONDENT

Bribery by the First Respondent at his residence at Korobosea, NCD on 15 April 2017.

9. On 15th April 2017, Aoneka Maa, Toma Nela, Tena Ganua and Willy Waka went to the First Respondent's residence at Korobosea, NCD.
10. The above named persons are the First Respondent's Campaign Co-ordinators and strong supporters are from Baramata No.4 village in Abau.
11. At the First respondent's residence, the First Respondent and the Campaign Co-ordinators discussed campaign plans and strategies. At the

conclusion of the discussions, the First Respondents passed onto the co-ordinators a total of K46,000 in cash("cash").

12. The First Respondent, when handing over the cash to the co-ordinators, instructed them to break the cash and clearly specified that the cash, once broken up, is to be given his supporters to ensure that his supporters vote for him and to secure new supporters. The First Respondent told the co-ordinators to ensure that the money, when distributed, was not given to any of the supporters for any of the other candidates (unless they were going to vote for him) and also to ensure that another candidate for the same electorate, namely Kilroy Genia did not find out about the cash being distributed because Kilroy Genia would take him to court as he had previously done so in the past. (Sic.)
13. Out of the cash received from the First Respondent, Aoneka Maa was given K400.
14. Each of the co-ordinators named at [9] are all registered electors for the Abau Open Electorate.
15. The sum of money given to Aoneka Maa by the First Respondent was to cause or induce him to vote for the First Respondent.
16. Each of the co-ordinators named at [9] did vote for the First Respondent including Aoneka Maa, having received the sum of K400 from the First Respondent.
17. The First Respondent on the basis of the foregoing, is alleged to have committed bribery pursuant to Section 103 (a)(iii) and (d) of the Criminal Code).
18. Consequently, pursuant to Section 215(1) of the Organic Law on National and Local Level Government Elections ("the Organic Law"), the election of the First Respondent must be declared void.

Bribery by the First Respondent at Kupiano on 30 April 2017

19. On 30 April 2017, the First Respondent met with Aoneka Maa, Tom Nela, Iala Doe, Kalei Telo, Willy Wala and Kasty Mailau at his house at Kupiano, all named persons having arrived there by dinghy.
20. Each of the above named person are registered electors for Abau Open Electorate.
21. At the meeting on 30 April 2017, the First Respondent repeated the matters set out at [12] above and gave to them collectively, a sum of K2000 out of which Aoneka Maa received K70.
22. The sum of K2000 given by the First Respondent to the named electors at [19] including Aoneka Maa, was given with the intention of causing or inducing the named electors, among others, to vote for him.
23. The First Respondent on the basis of the foregoing, is alleged to have committed bribery pursuant to Section 103 (a)(iii) and (d) of the Criminal Code)
24. Consequently, pursuant to Section 215(1) of the Organic Law on National and Local Level Government Elections ("the Organic Law"), the election of the First Respondent must be declared void.

BRIBERY BY AGENTS OF THE FIRST RESPONDENT OR PERSONS OTHER THAN THE FIRST RESPONDENT WITH THE KNOWLEDGE OR AUTHORITY OF THE FIRST RESPONDENT.

Bribery by Aoneka Maa, an agent of the First Respondent, with the knowledge or authority of the First Respondent

25. Aoneka Maa is from Baramata No.4 village, in the Abau Open Electorate and is a registered voter. He is a strong supporter of the First Respondent and is a member of a committee set up by the First Respondent for the purposes of planning, orchestrating and implementing the First Respondent's election plans and strategies.
26. For that purpose Baramata No.4 is divided into 4 zones. Aoneka Maa is the leader of Zone 2.

27. Aoneka Maa, from the cash received at [11] above, as a Zone Leader, was given K1,000 and instructed by the First Respondent to break this sum of money up and use this for two primary purposes, these being:
- (a) to give this to the First Respondent's supporters; and
 - (b) to also use the said funds to secure new supporters
28. Aoneka Maa was also specifically instructed to ensure Kilroy Genia, a candidate for the Abau Open Electorate did not find out about Aoneka having received this money from the First Respondent for the purposes set out immediately above because the First Respondent did not want Kilroy Genia to take him to court again.
29. The objective of using the money in the manner specified was to cause or induce the recipients of the money to vote for the First Respondent.
30. Aoneka Maa gave to the following persons, all of them being registered electors and which was accepted by each of them respectively, a sum of K100 each and this was to cause or induce each of them respectively, to vote for the First Respondent:
- (a) Albert Tuki;
 - (b) Maino Roana;
 - (c) Marawa Maoneka;
 - (d) Peter Bonou;
 - (d) Joe John;
 - (e) Tom Auneka, and
 - (f) Kelly Walelo
31. On the evening of the 22 April 2017, Aoneka Maa went to Francis Tore's house and gave him K100 and caused or induced Francis Tore, a registered elector, to vote for the First Respondent. Francis accepted the

K100 note and did vote, at the time of polling, for the First Respondent.

32. The matters specified herein, particularly at [30] and [31] occurred with the knowledge or authority of the First Respondent, being from where the money originated.
33. The First Respondent on the basis of the foregoing, is alleged to have committed bribery pursuant to Section 103 (a)(iii) and (d) of the Criminal Code)
34. Consequently, pursuant to Section 215(1) of the Organic Law on National and Local Level Government Elections ("the Organic Law"), the election of the First Respondent must be declared void.

Bribery by Tom Torei and Tom Nela, agents of the First Respondent, with knowledge or authority of the First Respondent

35. Tom Torei and Tom Nela are from Baramata No.4 village, in the Abau Open Electorate and are registered voters of the electorate. Both men are members of the committee referred to at [25] above.
36. On 17 April 2017, Tom Tore gave Francis Tore a K100 note with the intent to cause or induce the said Francis Tore, being a registered elector, to vote for the First Respondent.
37. Later that same evening, Tom Nela, went to the same Francis Tore and also gave him another K100 note with the intent to cause or induce the said Francis Tore, being a registered elector, to vote for the First Respondent.
39. The First Respondent on the basis of the foregoing, is alleged to have committed bribery pursuant to Section 103 (a)(iii) and (d) of the Criminal Code)
40. Consequently, pursuant to Section 215(1) of the *Organic Law*, the election of the First Respondent must be declared void.

Bribery by Maki Ivi, an agent of the First Respondent, with the knowledge and or authority of the First Respondent

41. Maki Ivi is a strong supporter of the First Respondent and one of his election co-ordinators and acts on instructions from the First Respondent. Maki Ivi is from Gavuone village in the Abau Electorate.
42. On or about 16 June 2017, at Gavuone Village, Maki Ivi gave to Ben Aki, a registered elector for the Abau Open Electorate, an amount of K15, being a K10 note and a K5 note, with the intent to cause or induce the said Ben Akito vote for the First Respondent.
43. Maki Ivi was asked by Ben Aki what the money was for and Ben Aki was told that the money was from the First Respondent and given to the First Respondent's co-ordinators to be distributed at the co-ordinators discretion and given to electors to vote for the First Respondent.
44. Ben Aki accepted the money from Maki Ivi, having understood what was required of him.
45. On the day of polling at Gavuone village, Ben Aki did not vote for the First Respondent and when Maki Ivi became suspicious of the manner in which Ben Aki had cast his vote, he became angry and screamed and shouted angrily at Ben Aki, words to the effect that Ben Aki should pack up and leave the village with his family.
46. While still out in the open next to the polling booth, Ben Aki pulled K15 out of his pocket, looked at Maki Ivi and asked Maki Ivi to take his money back. Ben Aki then walked over to Maki Ivi to hand him back the money but Maki Ivi walked away.
47. Because of this commotion, Ben Aki was taken aside by one Constable John Yawingand subsequently to the Police Station where an entry was made in the RPNGC Occurrence Book reporting the bribery in the form of K15.

48. The matters specified herein, particularly at [42] occurred with the knowledge or authority of the First Respondent.
49. The First Respondent on the basis of the foregoing, is alleged to have committed bribery pursuant to Section 103 (a)(iii) and (d) of the Criminal Code)
50. Consequently, pursuant to Section 215(1) of the *Organic Law*, the election of the First Respondent must be declared void.

Bribery by Wavuri Uali, an agent of the First Respondent with knowledge and or authority of the First Respondent

51. Wavuri Uali is from Paramana village in the Abau Open Electorate. Wavuri Uali is a strong supporter of the First Respondent and one of his election co-ordinators and acts on instructions from the First Respondent.
 52. Au Gewa is also from Paramana village and is a registered elector there.
 53. On 24 June 2017, Wavuri Uali gave to Au Gewa, a solar panel and told Au Gewa that the solar panel was from the First Respondent and that Au Gewa , having received the solar panel must vote for the First Respondent on polling day.
 54. The solar panel given by Wavuri Uali was given with the knowledge or authority of the First Respondent and was meant to cause or induce Au Gewa to vote for the First Respondent.
 55. The First Respondent on the basis of the foregoing, is alleged to have committed bribery pursuant to Section 103 (a)(iii) and (d) of the Criminal Code.
 50. Consequently, pursuant to Section 215(1) of the *Organic Law*, the election of the First Respondent must be declared void.
5. The First Respondent also mounted a belated challenge to the petition, by Notice of Motion dated 01 December 2017,

principally on the basis the basis that the Petitioner did not have standing. I heard that motion and dismissed on 05th December 2017.

THE OBJECTION

6. The Second Respondent objects the competency of the petition on the basis that it does not comply with Section 208(a) of the *Organic Law*. The particulars of the objection are as follows:

Particulars Of Objection

1. All alleged incidents of bribery are objected to on the basis that they are grounded on the First Respondent's conduct when he was not a candidate for the purposes of Section 215 (1) of the Organic Law. The subsequent grounds of bribery emanate from the First Respondent's purported conduct as described under the first ground of bribery. The First Respondent is described as giving out K46,000 to his strong supporters at his Korobosea residence and this constitutes the first alleged incident of bribery. The subsequent incidents of bribery appear to be comprised of distribution by these individuals of the money received from the First Respondent.

The Petition states that the Writs were issued on 20th April 2017, but does not state when the First Respondent formally nominated as a candidate. But his nomination would have occurred after the date of issue of Writs. The incident when the First Respondent gave out the money is stated as having occurred on 15th April 2017. This was before the issue of Writs and before the First Respondent was a candidate within the meaning of Section 3 and for the purposes of Section 215 (1) of the Organic Law. The first alleged incident of bribery is therefore incompetent as the facts are not proper facts that can be relied on to invalidate the First Respondent's return.

The subsequent events of bribery seek to invalidate the First Respondent's return under Section 215(1) on the basis of indirect bribery committed by persons other than the First Respondent. The nexus between the First Respondent and the person committing the bribery in the subsequent allegations lies in the facts of the first allegation of bribery. The petition contends that the money and gift given out by the First Respondent as described in the first allegation. The validity of the subsequent allegations rest on the first allegation and therefore cannot stand when the primary allegation is incompetent.

2. Further the allegations of bribery seeking to invalidate the First Respondent's return through indirect bribery are also incompetent for failing to provide facts establishing the First Respondent's knowledge or authority. These allegations seek to invalidate the First Respondent's return under Section 215 (1) of the *Organic Law* through the acts of persons other than the First Respondents. There must be sufficient facts establishing the First Respondent as a principle [sic] perpetrator to constitute the ground under Section 215 (1) of the *Organic Law*.

The facts in each alleged incident of bribery merely state that it was done with the First Respondent's knowledge or authority. This is insufficient. The base facts establishing the First Respondent's specific knowledge and authority in relation to each particular is required him to make him a primary or principal offender in respect of that allegation. The grounds of indirect bribery are therefore incompetent for failing to provide these crucial base facts connecting the First Respondent to each alleged incident.

3. The facts of each alleged incident of bribery is further objected on the basis of being inconclusive and confusing by asserting breach of two distinct types of bribery under Section 103 of the Criminal Code. Each occasion of bribery is connected as breaching Section 103(a)(iii) and (d) of the Criminal Code. These two subparagraphs describe a separate and distinct type of

bribery. They are each constituted by different elements. Section 103(a)(iii) talks about direct bribery while Section 103(d) talks about advancing money for any of the purposes under Section 103(a). The former covers direct bribery while the latter seems designed to cover situations of indirect bribery.

The petition contends that both types of bribery were committed but it is unclear if the money given in each case was intended to induce the recipient in the manner described under Section 103(a)(iii) or for the recipient to further advance the money or gift in the manner described under Section 103(d).

4. Further to the foregoing, the first allegation of bribery described as "Bribery by the First Respondent at his residence at Korobosea, NCD on 15th April 2017" is objected to on the basis that:
 - 4.1. It is not stated how the cash of K46,000 was broken up and distributed;
 - 4.2. The recipients described as the First Respondent's campaign coordinators and strong supporters. It is therefore logical to allege bribery against persons who are supporters of the First Respondent.
 - 4.3. It is apparent from paragraph 12 that the money was given for legitimate campaign purposes. The First Respondent gave the money for the persons to organize and coordinate his existing support base and extend his support where possible. It does not state that the First Respondent directed those persons to induce through bribery.
 - 4.4 The allegation as stated is inconclusive on the basis that the facts indicate the money was given to recipients to use in the First Recipients campaign as his coordinators and not as a means of inducement.
5. The allegation described as "Bribery by the First Respondent at Kupiano on 30th April 2017" is also

objected on the basis of the grounds as stated above at paragraphs 4(iii) and (iv) of this objection.

6. The alleged incident of bribery by one Aoneka Maa is further objected on the basis that:

6.1. Serious inconsistencies appearing on the fact of the petition make this allegation untenable. He is stated at paragraph 13 of the petition as being given K400 from the K46,000 mentioned at paragraph 11. However, at paragraph 27, he is described as having received K1000 from this same K46,000.

6.2. The dates when the persons named at paragraph 30 were given money is not dated. [sic]

7. There are six grounds of objection in total. However, these can be easily reduced to two broad grounds only - the first, challenging whether the First Respondent was a candidate at the relevant time he allegedly gave K46,000 to his coordinators and the effects of such on the indirect allegations of bribery which allegedly followed suit.

8. And the second, being the challenge on whether or not the Petitioner ought to have pleaded specifically the type of bribery alleged and whether the First Respondent was the principal perpetrator in respect of each alleged incident of direct and indirect act of bribery.

ISSUES

9. The issues for my determination are:-

1. Whether the First Respondent was a "candidate" when he allegedly gave out monies to persons named in the Petition so as to constitute a ground of bribery under Section 215 of the Organic Law?
2. Whether the facts alleged in support of direct bribery by the First Respondent sufficiently comply with Section 208(a) of the Organic Law?

3. Whether the facts alleged in support of indirect bribery sufficiently comply with Section 215(i) of the Organic Law?

10. At this juncture, I must be quick to say that objections 4 and 5 and 6, in so far as they challenge the petition on the basis of lack of conclusiveness and inconsistencies of the allegations, ought to be swiftly dismissed for being misconceived and hence incompetent themselves.

11. They are misconceived because the Second Respondent is inviting the Court to draw inferences and conclusions of fact and law from the pleaded facts. It is not for the Court, at this stage, to concern itself with how, for instance, the alleged amount of K46,000 was broken up or distributed to the persons alleged to have received the monies. Furthermore, arguments about whether the First Respondent's campaign managers and co-ordinators or his existing supporters of the are capable of being bribed invite the Court to draw a conclusion of law and this is just not the stage for it to do that. These are things best left to the trial itself if this matter proceeds that far.

12. An objection to competency goes to the Court's jurisdiction, and as such, the Court is not concerned with the question of whether or not the material facts pleaded by the Petitioner are conclusive or inconsistent, or any inferences that may be drawn there-from, which, in the normal run of things, can only be done after the Court has heard the evidence. We are not at that stage yet, hence, I dismiss these grounds of objection.

13. We are therefore left with three objections only which directly address the issues postulated above. Let me now deal with the issues.

14. Issue No.1 will have a different effect hence I will deal with it first. However, Issues 2 and 3 are related and therefore I will deal with them together.

ISSUE 1: Whether the First Respondent was a Candidate within the Meaning of the Organic Law at Relevant time?

15. While it can be said that the meaning of the word "candidate" can be addressed at the trial, I am of the respectful opinion that this is a threshold issue that must be appropriately considered at this stage, as the Court would only be seised of jurisdiction if a winning candidate were a "candidate" within the meaning prescribed by Sections 3 and 215 of the Organic Law.

16. Mr. Okil submitted that the term candidate has a general and, an extended meaning in the *Organic Law*. The extended meaning, counsel submitted, applies only to Part II (*Administration*) and Part XVII (*Offences*) and covers persons who have not yet formally nominated, but have announced themselves as a candidate. The general definition on the other hand, is that a person becomes a candidate only after he has formally nominated in accordance with Part XI of the *Organic Law*, and since Section 215 is part of Part XVIII (*Disputed Election Returns etc.*), the general definition therefore applies. Counsel finds authority principally in the case of *Ebu v Evara* [1983] PNGLR 201, which I will presently discuss.

17. It was Mr. Okil's submission that the Petition does not state when the First Respondent formally nominated as a "candidate." And while the first allegation of bribery is alleged to have occurred on 15th April 2017, the petitioner pleads at Paragraph 2 that the Writs were issued on 20th April 2017. It follows therefore that the alleged acts of direct bribery occurred before the Petitioner became a "candidate" within the extended meaning of the term.

18. Mr. Henao, in behalf of the First Respondent submitted in support of the Second Respondent, that the First Respondent was not yet a candidate within the meaning of Section 215 of the *Organic Law* because on 15th April 2017 he was not yet a candidate, not having nominated as yet. In fact he became a candidate only on his nomination at Kupiano on 26th April 2017 after the issue of Writs for Abau Open Electorate on 20th April 2017.

19. The upshot of both Respondents' submissions is that the Petition, in so far as it concerns the alleged acts of direct bribery by the First Respondent, is incompetent.

20. In response, Mr. Tabuchi for the Petitioner submitted that the First Respondent was the sitting member for the Abau Open Electorate going into the 2017 Elections, and therefore for all intents and purposes, including the *Organic Law*, was a candidate.

21. The term "candidate" is defined by Section 3 (1) of the *Organic Law* in the following terms -

(1) *In this Law, unless the contrary intention applies -*

"candidate" in Parts II and XVII, includes a person who, within three months before the first day of the polling period, announces himself as a candidate for election as a member of the Parliament;"

22. Parts II of the *Organic Law* deals with matters of administration while Part XVII deals with electoral offences.

23. The term candidate has indeed been judicially considered and the statement by Bredmeyer J. in *Ebu v Evara* (supra) seemed to have held sway for a while as the correct position in law as to the definition of the term candidate. However, as Mr. Okil pointed out in his submission that, *Ebu v Evara* appears to have been over-ruled by the Supreme Court in *Nomane v Mori* (2013) SC 1242 (per Kandakasi, Cannings and Collier JJ). Interestingly, a member of that bench, Cannings J., in *Singirok v Fairweather* (2014) NC 5577 later recapitulated and held to the

contrary that *Ebu v Evara* correctly stated the definition of the term candidate.

24. In *Ebu v Evara*, Ebu had sought the voiding of Evara's return on two grounds of undue influence, alleged to have occurred in two separate meetings on 15th and 16th March 1982. Evara admitted attending those meetings, but denied verbally unduly influencing the people gathered there into voting for him. He also denied the meetings happened on 15th and 16th March 1982, but rather on 11th and 14th December 1981.

25. Bredmeyer J. accepted Evara's version, but then had to contend with the question of whether Evara was, on the 11th and 14th December 1981, a candidate within Section 215 of the *Organic Law on National Elections* (repealed and replaced by the *Organic Law on National and Local Level Government Elections*). Section 215 is replicated in the current *Organic Law*. His Honour had to consider the meaning of candidate as used in Section 215 and section 2 (*Interpretation*) which is now Section 3(1) of the *Organic Law*.

26. His Honour expressed having some difficulty with the meaning of the term candidate because Section 215 was in Part XIII of the then *Organic Law*, but in determining what the term meant this is what His Honour said at p.201 -

To determine what the word candidate means in s. 215 I ask: What does it mean generally in the Organic Law? and then; What special meaning does it have in Pts II and XVII? I consider the word candidate when used generally in the Organic Law means a person who has duly nominated in the correct manner under ss 82 and 84. He is required to submit a written nomination on a prescribed form (form 11) giving certain particulars of himself. The form must be lodged with the Returning Officer by a certain date accompanied by a K100 deposit. The form and manner of nomination is prescribed by law. When a person has nominated in that way he is a candidate, and prior to that he is simply an intending or prospective candidate.

...

Section 2, the interpretation section, is I consider based on that definition which I have given; that is a candidate is one who has formally nominated in the correct way before nominations close. Once nominated the candidate remains a candidate until the return of the writ. Section 2 is based on that definition, it assumes that definition, and extends it or widens it for the purposes of Pts II and XVII to a person who announces himself as a candidate in the three-month period before the commencement of polling. The prohibitions and offences contained in those two parts of the Organic Law not only apply to nominated candidates but also to announced candidates — that is those who have announced publicly within the three-month period before polling that they intend to stand for election. The extended definition makes good sense. Consider s. 22. It would be foolish to allow a man to be appointed a returning officer if he is an announced candidate. Consider Pt XVII. If the definition was not extended, an unscrupulous fellow for up to six weeks could avoid all the prohibitions of Pt XVII, for example as to the size of posters, hand bills, the method of advertisements etc. He could avoid it by delaying his nomination until the last day for nominations and he could thus have six weeks of unscrupulous campaigning ignoring all the "rules" contained in Pt XVII designed to ensure a fair election.

27. His Honour concluded therefore that the term candidate in its general meaning and for the purpose of Section 215 means a person who has formally nominated according to the prescribed procedures under Part XI of the Organic Law. Under Section 2[3] the term, however, has the extended meaning for the purpose of Part II and Part XVII of the Organic Law. His Honour concluded that Evara did not become a candidate until he formally nominated. Hence, any utterances he made before that, whether immediately before he nominated, or within three months before the first day of the polling period, when he announced himself as a candidate for election as a member of the Parliament, cannot support an order to void his election.

28. *Ebu v Evara* was subsequently followed by *Palme v Mel* (1989) N808 and *Nomane v Mori* [2013] N5059. In the latter case, the court upheld the objection to competency on the basis that the alleged bribery took place two weeks prior to the issue of Writs before the First Respondent formally nominated. The case

was, however, taken up on appeal and the Supreme Court as I earlier alluded appears to over-ruled *Ebu v Evara*. There, the Justices, after quoting the relevant passage by Bredmeyer J said

91. With respect, we consider that his Honour misinterpreted the definition of "candidate" in Section 3(1) of the Organic Law. The fact that the alleged act of bribery occurred two weeks before the writ was issued is not a relevant consideration. The question is whether the person who allegedly committed bribery had within the period of three months before the first day of the polling period announced himself as a candidate. The first day of the polling period was 23 June 2012. Three months before then is 23 March 2012. So the question becomes whether the first respondent had announced himself as a candidate in the three-month period from 23 March to 23 June. We consider that this fact was adequately pleaded. Ground 5.10 is upheld.

29. At this juncture I must state that the courts have not always followed *Ebu v Evara*. For instance, in *Kramer v Duban* (2013) N5213, His Honour Gavara-Nanu J. appeared to have given a liberal construction to the term "candidate" as defined by Section 3 of the *Organic Law* when he dismissed an objection challenging the competency of a petition based on an allegation of bribery on the basis that at the time the time the alleged act was committed, the First Respondent was not yet a "candidate." The Writs in that case were issued on 23 May 2012 and the alleged bribery happened on 20 April 2012 when the First Respondent also announced his candidacy.

30. In rejecting this objection His Honour said -

14. Section 3 of the OLNLGE is very clear and specific. The definition of a "candidate" given in the section makes it very plain that 20 April, 2012, fell within the three months period before the first day of the polling period for the Madang Open electorate which as noted was 23rd June, 2012. I therefore accept Mr. Kramer's submission that the first respondent was a candidate on 20 April, 2012, when he allegedly committed bribery and undue influence. The second respondent's challenge ... must therefore fail.

31. Of note, however, is the judgment of Cannings J. in *Singirok v Fairweather* (supra) which I alluded to earlier, where His Honour deferred from the position he jointly held as a member the bench in *Nomane v Mori* (supra.) His Honour held that Bredmeyer J's reasoning, though based on the original, but now repealed *Organic Law on National Elections*, remains pertinent and correct, and has never been over-ruled by the Supreme Court. To quote his Honour fully, he said -

19. Bredmeyer J's judgment was delivered in 1983. It was based on the original Organic Law, which was repealed and replaced by the current Organic Law in 1997. However the provisions of the original Organic Law that his Honour was interpreting and applying are replicated in the current Organic Law. His Honour's reasoning remains pertinent. It has never been overruled by the Supreme Court. In fact the only reference to it appears to have been in the recent decision in Jim Nomane v Wera Mori (2013) SC1242 (Kandakasi J, Cannings J, Collier J), which did not, however, involve a detailed examination of it.

20. With the benefit of Mr Kongri's submissions, I am convinced that Bredmeyer J's reasoning is correct: for an offence of undue influence or bribery to give rise to a ground for declaring the successful candidate's election void under Section 215 the successful candidate must have been a duly nominated candidate at the time the offence was committed or attempted to be committed. (Underlining added)

32. When referred to the judgment of Gavara-Nanu J in *Kramer v Duban* (supra) His Honour said -

23. It appears, however, that neither Bredmeyer J's judgment in Ebu v Evara nor the limited application of the definition of candidate in Section 3, were brought to his Honour's attention. I tend to think that if those matters had been highlighted a different conclusion might have been reached. Whatever the case I am respectfully unable to agree with the approach his Honour took to this issue in Kramer v Duban. I find compelling the approach taken by Bredmeyer J in Ebu v Evara, and that is the approach that I will take in this case. The petition will only succeed if the petitioner can prove:

- that an offence of undue influence or bribery was committed or attempted to be committed by the first respondent or another person (with his knowledge and authority); and*
- that on the date that the offence was committed or attempted to be committed the first respondent had nominated as a candidate.*

33. This was in actual fact said at the trial, but what His Honour said there is very much pertinent to the issue at hand in the instant case.

34. I am also of the view that the term candidate has both a general meaning under the *Organic Law*, and an extended meaning which can be applied only to Parts II and XVII of the *Organic Law*. It makes no sense for Section 3(1) to say that under the *Organic law*, "candidate" in Parts II and XVII includes a person who has announced his candidacy for election as a member of the Parliament within three months before the first day of the polling period, unless the contrary intention appears.

35. If Parliament had intended the term to have a general, or singular meaning to include both a person who has duly nominated, and one who has merely announced his intention to run for election within three months before the first day of the polling period (prospective candidate), then, it would have not qualified the term by making reference to Part II and XVII of the *Organic Law*. It appears to me that no contrary intention can be drawn from the *Organic Law* itself. If anything, a careful reading of the Section 3(1) clearly supports the construction rendered to the term by Bredmeyer J. *Nomane v Mori* (supra) indeed did not over-rule *Ebu v Evara*. If the bench there attempted to, it simply did not expound any reason why it said His Honour misinterpreted the meaning of candidate in Section 3 of the *Organic Law*.

36. Applying this reasoning to the first ground of the petition in instant case, it is clear to me that for the First Respondent's return to be voided on the ground of bribery, he must firstly have formally nominated in accordance with Part XI (The Nominations) of the *Organic Law*, for only then would he become a candidate within the meaning of Section 215.

37. The writ for the Abau Open Seat was issued on 20th April 2017. Though notorious, this is an essential and material fact that ought to have been pleaded in the petition. It was not.

Rather it was volunteered by the First Respondent in his submissions.

38. Also the petition did not plead the date on which the First Respondent formally nominated. Again this is an essential and material fact that ought to have been pleaded. This is again crucial because the First Respondent must have been a candidate within the meaning of Section 215 for his return to be voided. And again the only time the Court was appraised of this was through the First Respondent's submissions. He nominated at Kupiano on 26 April 2017.

39. The First instance of bribery alleged against the First Respondent was on 15 April 2017, some 4 or 5 days before he officially nominated as a candidate. At that time, though, he was not yet a candidate within the meaning of Section 215 of the Organic Law.

40. Ground 1 of the Petition is therefore incompetent and is therefore dismissed.

41. Mr. Okil had also submitted that should the Court find that the First Respondent was not a candidate when he allegedly gave and distributed the sum of K46,000 to his co-ordinators, this should thus have a flow on consequence or effect on the other alleged acts of bribery, whether by the First Respondent directly, or indirectly through others.

42. I do not accept this argument, because every alleged act of bribery that occurred after the alleged event of 15 April 2017 is a separate incident. The fact that the First Respondent was not yet a candidate for the purpose of Section 215 of the *Organic Law* is of no consequence as it does not, and ought not to nullify subsequent acts of bribery, notwithstanding that the monies allegedly for that purpose was originally given out when the First Respondent was not yet a candidate.

43. I now move to the next issues.

ISSUE 2 & 3: Whether the Allegations of Direct and Indirect Bribery Comply with Section 208 (a) and Section 215 of the Organic Law?

44. The two remaining grounds of the objection to Competency essentially challenge the manner in which the allegations of direct and indirect bribery were pleaded, and ultimately whether the Petitioner has pleaded relevant and material facts to support those allegations so that the matter can proceed to trial.

45. The Petitioner had alleged direct acts of bribery against the First Respondent and indirect acts of bribery with the First Respondents knowledge or authority pursuant Section 103(a)(iii) and (d) of the *Code*.

46. The Second Respondent took issue (and is supported by the First Respondent) to the sufficiency of the pleadings in respect of the alleged acts of bribery by the First Respondent and his named co-ordinators. The Second Respondent also took issue with the manner in which the allegations were framed in as far as they pleaded the relevant provisions of Section 103 of the *Code* which are alleged to constitute the acts of bribery. Further, in so far as the petition alleges the acts of indirect bribery by agents of the First Respondent, the Second Respondent contended that this is also not sufficiently pleaded with material facts and for failing to state whether the First Respondent was a principal perpetrator.

47. Section 215 of the *Organic Law* provides the grounds for voiding an election for illegal practices. It states -

Section 215 (*voiding election for illegal practices*)

(1) *If the National Court finds that a candidate has committed or has attempted to commit bribery or undue influence, his election, if he is a successful candidate, shall be declared void.*

(2) *A finding by the National Court under Subsection (1) does not bar or prejudice a prosecution for an illegal practice.*

(3) The National Court shall not declare that a person returned as elected was not duly elected or declare an election void—

(a) on the ground of an illegal practice committed by a person other than the candidate and without the candidate's knowledge or authority; or

(b) on the ground of an illegal practice other than bribery or undue influence or attempted bribery or undue influence,

unless the Court is satisfied that the result of the election was likely to be affected, and that it is just that the candidate should be declared not to be duly elected or that the election should be declared void.

48. The Supreme Court in *Supreme Court in Fairweather v Singirok* (2013) SC1293 (Mogish, Cannings, Poole JJ) held, among other things, that Section 215 deals with six scenarios in which there are three variables, these being -

- *the nature of the illegal practice: whether it was actual or attempted bribery or undue influence, which are regarded by the Organic Law as the most serious forms of illegal practice, or some other illegal practice;*
- *the person committing the illegal practice: whether it was committed by the successful candidate (regarded as the most serious conduct) or some other person;*
- *in the case of an illegal practice committed by a person other than the successful candidate: whether it was committed with (the most serious situation) or with (less serious) the candidate's knowledge or authority.*

49. Paraphrasing the Supreme Court at paragraph 21 of its judgment, the six scenarios, in decreasing order of seriousness, are:

1. *Where the successful candidate committed or attempted to under due influence or bribery. The result shall be declared void. (Section 215 (1))*
2. *Where someone other than the successful candidate or attempted by someone other than the candidate **with** the knowledge or authority of the candidate. There, the result shall be declared void without regard to whether (1) the result of the election was likely to be affected, and (2) it is just that the candidate should be declared not to be duly elected or that the election should be declared void as provided by Section 215 (3).*

3. *Where someone other than the successful candidate committed or attempted to commit undue influence or bribery **without** the knowledge or authority of the successful candidate. (Section 215 (3)(a) In such a case the result may be voided if (1) the result of the election was likely to be affected, and (2) it is just that the candidate should be declared not to be duly elected or that the election should be declared void. (Section 215 (3))*
 4. *Where the successful candidate committed an illegal practice other than actual or attempted bribery or undue influence. (Section 215 (3)(b). The result may be voided (1) the result of the election was likely to be affected, and (2) it is just that the candidate should be declared not to be duly elected or that the election should be declared void. (Section 215 (3))*
 5. *Where someone other than the successful candidate committed or attempted to commit an illegal practice other than actual or attempted bribery or undue influence committed by a person other than the candidate **with** the candidate's knowledge or authority (s 215(3)(b)). The result may be voided if (1) the result of the election was likely to be affected, and (2) it is just that the candidate should be declared not to be duly elected or that the election should be declared void.*
 6. *Where an illegal practice other than actual or attempted bribery or undue influence is committed by a person other than the candidate **without** the candidate's knowledge or authority (s215(3)(b)). Here the result may be voided if (1) the result of the election was likely to be affected, and (2) it is just that the candidate should be declared not to be duly elected or that the election should be declared void.*
50. Among other things, the Supreme Court also held the petitioner's failure to plead the qualifications under section 215 (3) for voiding a result on the ground of illegal practice other than bribery or undue influence was of no consequence in respect in respect of the first two scenarios.
51. The current case involves scenarios number 1 and number 2.
52. Now, it is settled that to void the result of an election, a petitioner must strictly comply with the requirements of Section 208 and 209 of the Organic Law. Section 210 provides to that effect.
53. Section 208 states -

208. REQUISITES OF PETITION.

A petition shall—

- (a) set out the facts relied on to invalidate the election or return; and*
- (b) specify the relief to which the petitioner claims to be entitled; and*
- (c) be signed by a candidate at the election in dispute or by a person who was qualified to vote at the election; and*
- (d) be attested by two witnesses whose occupations and addresses are stated; and*
- (e) be filed in the Registry of the National Court at Port Moresby or at the court house in any Provincial headquarters within 40 days after the declaration of the result of the election in accordance with Section 175(1)(a).*

54. Section 209 provides that the petitioner, shall, at the time of filing his petition deposit with the Registrar of the National Court the sum of K5000 as security for costs. There is no issue for compliance with this provision in this case.

55. This case will therefore turn on a consideration on whether or not the requirements of Section 208 had been complied with. In that regard, there is also no issue with the other requirements of Section 208. The main contention hangs around the question of whether or not the petitioner has set out the facts upon which he relies to invalidate the election of the First Respondent as required by Section 208 (a).

56. The law is settled on what is required of a petitioner in respect of setting out the facts under Section 208(a). Cases like *Biri v Ninkama* [1982] PNGLR 342; *Holloway v Ivarato* [1988] PNGLR 99, *Amet v Yama* (2010) SC 1064 and *Apelis v Chan* (1998) SC 573 (among many), are authority for the well established position that a petitioner must set out all relevant and material facts that support the grounds of the petition. He is, however, not required to set out the evidence that he relies upon to prove his allegations, which, is a matter for the trial. A petition that fails to set out the relevant and material facts is incompetent and must be dismissed.

57. The Supreme Court in *Biri v Ninkama* (supra) said the following in regard to the serious nature of election petitions and the strict requirements of Section 208 of the then Organic Law on National Elections. It said at p. 345 -

"... [I]t seems to us that the Statute has clearly expressed its intention that a petition must strictly comply with s 208. It is not difficult to see why. An election petition is not an ordinary cause ... it is a very serious thing. It is basic and fundamental that elections are decided by the voters who have a free and fair opportunity of electing the candidate that the majority prepare. This is a sacred right and the legislature has accordingly laid down very strict provisions before there can be any challenge to the expressing of the will of the majority.

In our opinion it is beyond argument that if a petition does not comply with all of the requirements of s 208 of the Organic Law on Elections then there can be no proceedings on the petition because of s 210."

58. In *Holloway v Ivarato* (supra) Kapi DCJ (with whom Los and Hinchliffe JJ agreed), describes at pp. 101 and 102 what is required of a petitioner this way -

In ordinary civil suits, only material facts are pleaded and not the evidence by which the facts are to be proved: O 8, r 8 of the National Court Rules. The English rules on election petitions have adopted the same rules of pleading.

It would be an unreasonable rule to require the petitioner to set out all the evidence on which a petitioner may rely to prove the material facts. In actual practice, it may require a longer time to collect, gather, or prepare evidence for trial. In some cases, it would not be possible to collect all the evidence within the two months limitation period.

...

In setting out the facts, they must be sufficient so as to indicate or constitute a ground upon which an election may be invalidated. What are sufficient facts depends on the facts alleged and the grounds those facts seek to establish. Anything falling short of that would defeat the whole purpose of pleading, that is, to indicate clearly the issues upon which the opposing party may prepare his case and to enable the court to be clear about the issues involved.

59. In *Pirika v Itanu* (2006) N3246, Kandakasi J. echoed the authorities, saying that the courts and the parties ought to be scrutinizing whether the facts relied upon to invalidate the

results of the election are sufficiently stated in the petition to disclose a fact alleged and not necessarily every single detail of the facts stated which are really matters for the trial or hearing in the event that there is a clear statement of a fact of an illegality, or irregularity or errors or omissions which affected the results.

60. And in *Kramer v Duban* (2013) N5213, Gavana-Nanu J stated that "... the facts pleaded should also sufficiently inform the Court of the issues before it and the respondents should also know from the facts pleaded what to meet at the trial and how to prepare their cases: *Holloway v Ivarato* (supra), *Anthony Michael Siaguru v David Unagi and the Electoral Commissioner* [1987] PNGLR 373; *Vagi Mae v Jack Genia and Electoral Commission of Papua New Guinea* (1992) N1105. This is of course the general rule of pleadings. *Sinasina Open Electorate* N1123." [sic]

61. But having said that, it should generally be not necessary to plead the law in the strict sense. However, there is some difference of opinion in this regard. Some authorities take the lesser strict approach that there is no need to plead statutory provisions in the petition. Others take the strict approach and hold that where necessary, such as in cases of bribery and undue influence the relevant provisions of Section 103 (or Section 102) ought to be pleaded because of the different types of the misdemeanour provided therein. (*Mune v Agiru* (1998) SC 590; *Amet v Yama* (2010) SC 1064) The latest Supreme Court decision that ascribes to this position is that of *Nomane v Mori* (2013) SC1242 (Kandakasi, Cannings, Collier JJ) which held that if a petition alleges that the successful candidate has committed the offence of bribery under Section 103 of the *Criminal Code* it is necessary to state which particular offence has been committed and its elements.

62. It is settled law that "undue influence" and "bribery" in Section 215 mean one of the offences of undue influence or bribery created by Sections 102 or 103 of the *Criminal Code*

respectively. The petitioner has the burden of proving beyond reasonable doubt (not our concern for the time being) that one of those offences was committed or attempted to be committed by the successful candidate or by another person ((*Kopaol v Embel* (2003) SC727, *Diau v Gubag* (2004) SC775, *Waranaka v Dusava* (2009) SC980, *Amet v Yama* (supra) . At this stage of the proceedings all that is required of the Petitioner is to set out the relevant and material facts on which he relies.

63. Section 103 of the *Code* covers an array of circumstances which constitute several types of bribery. Hence, in the words of Cannings J in *Isoaimo v Aihi* (2012) N 4921-

9. Because of the high number of alternative elements it provides and the many different combination of elements this gives rise to, a petitioner must specify what particular bribery offences are alleged to have been committed. In the present case the petitioner argues that the first respondent committed bribery under Sections 103(a)(iii) and 103(d) of the Criminal Code.

64. While this was said in the context of a trial, the statement bodes well with the requirement that not only must the petitioner state the necessary and relevant facts to support an allegation of bribery he must also specify what particular type or types of bribery he alleges in his petition. And in stating those facts he must show what elements each fact or facts seek to support, falling short of pleading evidence. That I think is not pleading the law at all, but merely stating the supporting facts to bring about clarity to the allegations or pleadings, which is what the allegations in a petition really are.

65. In this case the Petitioner relies on Section 103 (a)(iii) and (d) of the *Code* which relevantly state -

103. Bribery

A person who—

(a) gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, on, or for, any person any property or benefit of any kind -

(i) ...; or

(ii) ...; or

(iii) in order to induce any person to endeavour to procure the return of any person at an election, or the vote of any elector at an election; or

(b) ...; or

(c) ...; or

(d) advances or pays any money to or to the use of any other person with the intent that the money will be applied for any of the purposes referred to in Paragraph (a), (b) or (c) or in discharge or repayment of money wholly or in part applied for any such purpose; or

(e) ...; or

(f) ...; or

(g) ...;

is guilty of a misdemeanour.

Penalty: ...

66. To satisfy the strict requirements of Section 208(a) the Organic Law, the Petitioner must therefore set out the relevant and material facts to support his allegations of bribery, more so the elements of the offence and specify the particular type of bribery alleged to have been committed by the successful candidate.

67. Because bribery (and undue influence for that matter) is criminal offence, it is understandable that it must attract the immediate sanction of voiding the election result as a matter of course and of law under Section 215 (a) of the *Organic Law*.

68. In that regard Woods J when comparing criminal prosecution of bribery as opposed to the treatment of bribery under the Organic Law, was prompted to state in *Agonia v Karo* [1992] PNGLR 463 that --

... [B]ecause "an election petition is a very serious thing;" because of the serious charges and consequences that petitions engender it is certainly necessary that any ground alleging a criminal offence must stipulate all the relevant material to establish such an offence. That includes the necessity to spell out in clear terms the elements of that offence.

In the case of bribery, as well as the specifics of the particular allegation, such as names, numbers, dates, place, there must be allegation that, this money, that property, or that gift, was offered by the successful candidate, and that the reason that it was given or offered was to get a named person to vote, or not to vote, or to interfere unlawfully, as the case maybe, in the free voting of an election.

I: Direct Bribery By First Respondent at Kupiano

69. Coming back to the case at hand, Mr Okil, with whom Mr. Henao agreed, submitted that the petition, as far as it relates to the alleged acts of direct bribery by the First Respondent, is incompetent for lack of sufficient particulars.

70. Mr. Tabuchi counters that the petition does in fact plead the relevant and material facts to support this ground.

71. I have dismissed the first ground of direct bribery by the First Respondent hence the only ground against him directly is the allegation of bribery on 30 April 2017 at Kupiano.

72. The Petitioner alleges the following at paragraphs 19 – 24:-

- That on 30 April 201 at Kupiano , the First Respondent gave the following persons collectively namely, Aoneka Maa. Tom Nela. Iala Doe, Kalei Telo, Willy Wala and Kasty Mailau, the sum of K2000 out of which K70 was given to Aoneka Maa.
- That they were instructed by to break up the cash and distribute it to his supporters and secure new supporters.
- That the money was given to these persons including Aoneka Maa with the intention of causing or inducing

the named persons and others to vote for for the First Respondent.

73. While the above facts appear to be relevant, are they sufficient to meet the requirements of Section 208 of the *Organic Law*? Furthermore, do they pleaded sufficient and material facts pertaining to their relevance to Section 103 (a)(ii) of the *Code*, given that the Petitioner is required to not only plead the relevant statutory provision, but most importantly plead the relevant facts supporting the type of bribery alleged?

74. To establish relevant and material facts for direct bribery, the Petitioner must have named the person or persons to whom money was given and how much, the date and place it was given. Here, these are sufficiently particularized.

75. However, when it is alleged that the sum of K2000 was given with the intention of causing or inducing these persons and others to vote for the First Respondent, is it sufficient to merely allege generally that the sum of K2000 was given for that purpose, without further pleading the exact words that manifested that intention?

76. Paragraph 21 of the petition says that the First Respondent repeated matters set out in paragraph 12 of the petition. Paragraph 12 was in support of the first alleged act of direct bribery by the First Respondent. It merely alleges that the First respondent instructed the person present then to break up and distribute the sum of K46000 to existing supporters and secure new voters, to ensure that none of the monies are given to supporters of other candidates unless they vote for him, and to ensure that another candidate, Kilroy Genia, does not find out as he might take him to Court.

77. While this may have sufficed in respect of the first allegation, I do not think that they are sufficient for the purpose of the second allegation. Intention is manifested by acts and

words, and I do not think that it is sufficient to merely repeat what was said in a different occasion, in general terms, what was said there to support an allegedly separate act of bribery. This is because it is from those words that the intention to bribe voters can be discerned ultimately if the matter goes to trial. Hence, the petition must, as far as possible, repeat the exact words spoken or made by the First Respondent. That is not pleading evidence, but pleading a material fact to support the allegation of bribery, and in particular, the requisite intention. That, the Petitioner has not done, and in my view, t he has failed to sufficiently plead a material fact.

78. I therefore dismiss this ground for being incompetent.

79. I now move to the alleged acts of indirect bribery.

80. At this juncture, I wish to dwell a little on Mr. Okil's submission in support of the Second Respondent's objection to the manner in which the relevant provisions of the Section 103 are said to have been breached. Mr. Okil submitted that Section 103(a)(iii) and (d) prescribe different types of bribery, the former direct and the latter indirect. Hence, the petition is incompetent in so far as the Petitioner pleaded both provisos as support for these two types of bribery.

81. This may appear to be a tenable argument because when those persons who are said to have received the money from the First Respondent engaged in separate acts of bribery a new offence is committed, it cannot be pleaded that he also offended Section 103(a)(iii) which is directed exclusively to a successful candidate and not any other person who acted corruptly in his election win wether with or without his knowledge or authority.

82. Does this however, render the petition or a specific allegation thereof incompetent? Section 217 of the Organic Law directs the Court to observe real justice when dealing with

petitions. It provides specifically that the Court “shall be guided by the substantial merits and good conscience of each case without regard to legal forms or technicalities, or whether the evidence before it is in accordance with the law of evidence or not.” It has been said that this provision applies to trials only, but I seek to defer. The provision must apply to objections to competency also, because to restrict it to trial, will result in injustice being done to parties on both sides.

II: Indirect Acts of Bribery

83. On the indirect allegations of let me deal with the alleged bribery by Wavuri Uali, simply because this allegation presents the least problem dealing with.

Bribery by Wavuri Uali

84. Wavuri Uali is alleged to have given a solar panel to one Au Gewa of Paramana village on 24 June 2017. And it is alleged that it was given with the knowledge or authority of the First Respondent. The petition, however, does not state nor does it provide any relevant and material fact to support this allegation. Who gave the solar panel to Wavuri in the first place? If it was the First Respondent, where and when was it given and for what purpose? There is simply no nexus between the alleged giver of the bribe (solar panel) and the First Respondent.

85. Accordingly this allegation is incompetent and is accordingly dismissed.

Bribery by Aoneka Maa

86. There are two alleged acts of by Aoneka Maa. The first, as we have seen above, is that he is said to have bribed Albert Tuki, Maino Roana, Marawa Aoneka, Peter Bonou, Joe John, Tom Auneka, and Kelly Walelo from K1000 which he allegedly received

from the K46000 alleged to have been given to him and other by the First respondent on 15 April 2017.

87. It is alleged that Aoneka Maa gave these men K100 each for the purpose causing or inducing them to cast their votes for the First Respondent and that this was done with the knowledge or authority of the First Respondent. These men are said to be from Barmatta No.4 village (Zone 2) of which Aoneka Maa is the Zone leader.

88. This allegation is incompetent because it fails to name the place and time and date which Aoneka Maa is said to have given those persons mentioned the bribes. These are relevant and material facts that ought to have been pleaded in the petition.

89. The second alleged act of bribery by Aoneka Maa is that on the 22nd of April 2017 he allegedly bribed one Francis Tore by giving him K100 which was to cause or induce him vote for the First Respondent. The petition does not name the place where the bribe was supposedly given.

90. While it is said that the money was to cause or induce Francis Tore to vote for the First Respondent, the petition does not state how this intention was communicated to Francis Tore. Again as I have said above, intention must be manifested physically by word or action hence, it is crucial that the exact words accompanying the handing over of the money be pleaded.

91. These are relevant and material facts that ought to have been pleaded. Failure to do so renders these allegation incompetent and they must be dismissed accordingly.

Bribery by Tom Tore and Tom Nela

92. Tom Tore and Tom Nela are alleged to be registered voters the Abau Open electorate and members of the First Respondent's campaign committee.

93. It is alleged that on 17 April 2017, Tom Tore gave Francis Torei, a registered voter for the electorate, K100 with the intent to cause or induce him to vote for the First Respondent. Later that evening, Tom Nela gave Francis Torei another K100 note for the same purpose.

94. This allegation must suffer the same fate as the allegation against Aoneka Maa because it fails to state place where the alleged bribery took place, but most importantly, for failing to state what words were said by Tom Tore and Tom Nela to Francis Torei, to manifest the intention that the money was to cause or induce him to vote for the First Respondent. There are relevant and material facts that ought to have been pleaded with particularity.

95. The Allegation against Tom Tore and Nela is therefore incompetent and is therefore dismissed.

Bribery by Maki Ivi

96. Maki Ivi is from Gavuone village and is alleged to be a strong supporter of the First Respondent as well as one of his co-ordinators.

97. It is alleged that on 16 June 2017, he gave to a registered elector, one Ben Aki, K15 in denominations of K10 and K5 at Gavuone village. It is alleged that when asked by Aki Aki what the money was for, Maki Ivi allegedly told him that the money was from the First Respondent given to his co-ordinators to disburse, at the co-ordinators discretion, to electors to cause or induce them to vote for the First respondent. Ben Aki received the money understanding what it was for.

98. It is further alleged that on the polling day, when Maki Ivi became suspicious of how Ben Aki had cast his vote, he became angry and demanded angrily and loudly for Ben Aki to leave the village with his family. Ben Aki, who was still at the polling booth, took K15 from his pocket and asked Maki Ivi to take his money back. The commotion resulted in Ben Aki being taken to the Police Station where an entry was entered in the Occurrence Book.

99. It is alleged again that this occurred with the knowledge or authority of the First Respondent. Are the facts here stated sufficient, but most importantly are they material and relevant?

100. Unlike the preceding allegations, this allegation appears to me to have been pleaded with more particulars. The person alleged to have been bribed is named, and the place and date of the alleged bribe are named as well as the amount of the alleged bribe.

101. A general statement on words imputing the purpose of the money and knowledge by the First Responded were pleaded. While the exact words were not pleaded, the alleged reaction of Maki Ivi on the date in question may lend some support there.

102. However, it is to be noted that the bribe is alleged to have been part of the K46,000 allegedly advanced by the First Respondent to his co-ordinators on 15 April 2017 at his Korobosea residence. The relevant pleading on that allegation does not, however, state that Maki Ivi was among those present then. So how then is Maki Ivi connected to the money trail so to speak? An important link or nexus is missing here. It is a material and relevant fact that ought to have been pleaded.

103. For that reason this allegation is also incompetent and must be dismissed.

CONCLUSION

104. The Petitioner has failed to plead relevant and material facts to support his allegations of bribery and therefore the petition ought to be dismissed in its entirety.

ORDERS

1. The Petition by the Petitioner is dismissed in its entirety for being incompetent.
2. The Petitioner shall pay the Respondents' costs.
3. Security deposit of K5000 shall be distributed between the Respondents.

Ordered accordingly.

Lawyer for the Petitioner: *Young & Williams Lawyers*
Lawyer for the First Respondent: *Henaos Lawyers*
Lawyer for the Second Respondent: *Kimbu & Associates Lawyers.*