

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

**BETWEEN: TUILAEPA LUPESOLIAI DR SAILELE  
MALIELEGAOI**

*First Applicant*

**A N D: LAUOFO FONOTOE NUAFESILI PIERRE  
LAUOFO**

*Second Applicant*

**A N D: SPEAKER OF THE LEGISLATIVE  
ASSEMBLY OF SAMOA**

*First Respondent*

**A N D: THE ATTORNEY GENERAL**

*Second Respondent*

**Counsel:** Dr. R. Harrison K.C, Fuimaono S. Ainuu, Faimalomatumua M. Lemisio, for Applicants  
Taulapapa B. Heather-Latu & B. Keith for First Respondent  
Sua Seiuli H. Wallwork-Lamb & Hon. C. Finlayson K.C. for Second Respondent

Hearing: 30 April 2025

Judgment: 9 May 2025

---

**RESERVED JUDGMENT OF PERESE C.J.**

---

**INTRODUCTION**

[1] The First and Second Applicants are Members of Parliament representing the Electoral Constituencies of Lepa and Anoamaa No. 1, respectively. The Hon Members are the Leader and Deputy Leader of the Human Rights Protection Party.

[2] The First Respondent is a representative of the Electoral Constituency of Fa'asalele'aga No. 3. The Hon Member is the Speaker of the Legislative Assembly of Samoa and has held that role since being elected to it in 2021 following the 2021 General Election.

[3] The Second Respondent is the Attorney General of Samoa and is a party to this proceeding “*out of caution and in respect of such relief as may be granted and in respect of the Government of Samoa*”.

[4] The proceeding stems from the passing of the Constitutional Amendment Act 2025 (“the CAA”), which amends the Constitution of the Independent State of Samoa 1960 (“the Constitution”). The CAA was presented for its first reading on 20 August 2024, subsequently read a second time on 29 August 2024; following public consultation it was required to return to Parliament no fewer than 90 days after the second reading for its third reading, and this was held on 26 February 2025.

[5] The Hon Papalii Li’o Masipa’u (“the Speaker”) cast a vote at the third reading. Mr Harrison described the Speaker’s vote as “*flagrant illegality*”. Had it not been for the Speaker’s vote, the necessary two-thirds majority would not have been met.

[6] The subject of the Applicants’ challenge is whether the Speaker was permitted to cast a deliberative vote? The result of the third reading vote has been certified, and the CAA has received His Highness the Head of State’s assent. The Applicants also challenge the certification of the third reading vote if it is found the Speaker was not permitted to vote.

[7] The issues raised in this matter are new and ask important questions about the role of a Speaker and the Speaker’s representative function and duties to his or her constituents. According to Dr Tuilaepa Malielegaoi, throughout his lengthy time in Parliament, a speaker has never exercised a deliberate vote in a constitutional amendment vote. The certification issue arises because the certificate is said to be conclusive of the outcome of a vote and may not be able to be challenged in Court,

## **FACTUAL BACKGROUND**

[8] The facts in this case are largely agreed.

[9] The CAA amends and repeals the constitutional amendments made by the former Government led by the Applicants, just before their party lost the General Election held in 2021. The Constitutional Amendments Act 2020 (“CAA 2020”) was notable for splitting Samoa’s legal system into two independent jurisdictions; (1) a civil and criminal jurisdiction administered by the Court of Appeal, the Supreme Court, and District Court; (2) a Land and Titles Court system for matters involving Samoan custom and usages in relation to matai titles and customary land under Part IX of the Constitution. The LTC’s independence was underscored by that jurisdiction having its own separate Court of Appeal and Judicial Review Court as its apex court. The Supreme Court’s jurisdiction was amended so as to remove Part IX. Before the CAA 2020, matters of Judicial Review were dealt with in the Supreme Court.

[10] The CAA, then a Bill, was referred to the Standing Orders, Electoral Petitions and Constitutional Offices Committee (“the Committee”). The Committee sought and received

extensive public submissions, including through consultations throughout Upolu and Savaii and remote consultations in New Zealand, and it produced a Parliamentary Committee Paper 2024/2024 No. 118.T.

[11] Voting in the third reading can be broken down as follows. There was a total of 53 Members of Parliament including vacancies made up of 51 elected Constituency Members and two additional Members (see below at [36 and 37]). Of total of 53 Members, 36 voted to support the CAA. Seventeen Members – all members of the HRPP, voted against. One member of the HRPP crossed the floor and voted in favour of the Bill. The constitutional amendment vote could only pass with a two-thirds majority of the total number of Members.

[12] The formula to determine whether the two-thirds majority was achieved is  $2/3 \times 53 = 35.3$ . The fraction is rounded up because you cannot have a part person. The Speaker's vote was therefore determinative in at least two ways; (1) he voted on the merits of the question before Parliament, and (2) his vote could be said to have determined the successful passage of the Bill by a two-thirds majority.

[13] The Speaker certified the result of the vote on the day of the vote. The certification was then conveyed to the Head of State. His Highness subsequently gave his assent. The status of the CAA is that of an Act of Parliament awaiting commencement. The Prime Minister nominated 7 April 2025 as the commencement date, but this Court stayed the commencement to allow for consideration of the Applicants' challenge.

#### **WAS THE SPEAKER PERMITTED TO VOTE?**

[14] The determination of this critical issue turns on the interpretation of the relevant provisions of the Constitution.

[15] The importance the Constitution gives the position of Speaker may be seen from the way the role is established, as follows:

**49. Election of Speaker - (1)** The Legislative Assembly shall, immediately when it first meets after a general election and as soon as possible after any vacancy occurs in the office of Speaker otherwise than by reason of a dissolution of the Assembly, elect a Member of Parliament to be Speaker of the Legislative Assembly.

**(1A)** As an exception to clause (1), the Member nominated, by the party that wins majority of all the seats in the Legislative Assembly after a general election, is taken to have been duly elected by the Legislative Assembly pursuant to clause (1) and shall be endorsed by the Legislative Assembly as Speaker.

**(1B)** For any vacancy under clause (1), the Member nominated, by the party or parties in Government, is taken to have been duly elected under clause (1) and shall be endorsed by the Legislative Assembly as Speaker.

(2) The Speaker, upon being elected and before assuming the functions of his or her office, shall take and subscribe before the Head of State an Oath of Allegiance in the form set out in the Third Schedule.

(3) The Speaker may at any time resign his or her office by writing under his or her hand addressed to the Clerk of the Legislative Assembly and shall vacate his or her office:

(a) if the Speaker ceases to be a Member of Parliament; or

(b) if the Speaker is appointed to be a Minister.

The Speaker's high leadership role in Parliament is moreover reflected in art. 55:

**55. Presiding over Legislative Assembly** - The Speaker, or in his or her absence the Deputy Speaker, shall preside over sittings of the Legislative Assembly. In the absence from any sitting of both the Speaker and the Deputy Speaker, the Members of Parliament present shall choose one of their number (not being a Minister) to preside over that sitting.

Mr Harrison referred to the quorum provision as instructive of the Speaker having an arms-length role. The principles concerning quorum are in the following terms:

**57. Quorum** - No business shall be transacted at any sitting of the Legislative Assembly if objection is taken by any Member of Parliament present that the number of Members present is (besides the Speaker or other Member presiding) fewer than one-half of the total number of Members of Parliament (excluding vacancies).

There are other Constitutional provisions that are directly relevant to this dispute. Art. 58 provides:

**58. Voting** - (1) Except as otherwise provided in this Constitution, every question before the Legislative Assembly shall be decided by a majority of the votes of the Members of Parliament present.

(2) The Speaker, or the Deputy Speaker or any other Member of Parliament while presiding over a sitting of the Legislative Assembly in the absence of the Speaker, shall not have a deliberative vote but, in the case of an equality of votes, shall have a casting vote.

Art. 109 is in the following terms:

**109. Amendment of Constitution** - (1) Any of the provisions of this Constitution may be amended or repealed by Act, and new provisions may be inserted in this Constitution by Act, if a bill for any such purpose is supported at its third reading by the votes of not less than two-thirds of the total number of Members of Parliament (including vacancies) and if not fewer than 90 days elapse between the second and third readings of that bill: **PROVIDED THAT** no bill amending, repealing or adding to the provisions of Article 102 or the provisions of this proviso shall be submitted to the Head of State for assent until it has been submitted to a poll of the electors on the rolls for the electoral constituencies established under the provisions of Article 44 and unless it has been supported by two-thirds of the valid votes cast in such a poll.

*(Note – the use of the term “electoral constituencies” formerly known as “territorial constituencies” as amended by the Constitution Amendment Act (No.3) 2019, No.10 only comes into effect on the day the Head of State dissolves the Legislative Assembly under Article 63(4) of the Constitution for the 2021 general elections as per Article 1(2) of the Constitution Amendment Act (No.3) 2019, No. 10).*

(2) A certificate under the hand of the Speaker that a bill has been passed under the provisions of clause (1) shall be conclusive and shall not be questioned in any Court.

I turn now to Counsels’ submissions.

*The Applicants’ submissions*

[16] Mr Harrison’s arguments on what he calls the constitutional invalidity of the Speakers vote in favour of the Bill are respectfully summarised below:

- a) The position of the Speaker is unique. The Speaker is an elected Member of Parliament. Membership of Parliament entitles someone to be elected Speaker, and from the moment the person is elected Speaker and gives his or her oath, they do not have separate “personal” capacity as a member and to vote as a member. No authority is cited for this proposition.
- b) The Speaker has a special role prescribed in arts. 55 and 57. The Speaker has an independence and impartiality, and his or her duty to preside is enforced by art. 57, which provides the Speaker is not included in the numbers required to form a quorum. This demonstrates that the Speaker’s role is detached, centred on presiding over Parliament and not entering the fray, as it were.
- c) The overall effect of Article 58 is that it prohibits the Speaker from casting a vote on any question before the Legislative Assembly, with a sole exception – where the question is one capable of being decided by a majority of the votes present and there arises an equality of votes, in which case the Speaker may exercise a casting vote only. In Learned Counsel’s oral submissions, Mr Harrison defined an equality of votes as meaning an equal number of votes.
- d) Taking the no deliberative vote prohibition, except a casting vote, argument to its logical conclusion, Mr Harrison submits the Speaker’s vote purportedly cast under art. 109(1) was not a casting vote because there was no equality of votes. Accordingly, the Speaker’s vote must have been a deliberative vote, and this would mean it was cast in his capacity as a member and therefore directed to the merits of the issue being voted on. However, Mr Harrison says the Speaker’s casting of a deliberative vote in art 109(1) is expressly prohibited under art. 58(2). An authority for this interpretation was not cited.
- e) Mr Harrison referred to the Constitutional Debates and the explanations given by Professor Dr Davidson. Reference to these documents is permitted under s. 7(5) Acts

Interpretation Act 2015 (“the AIA”) if they aid in the ascertainment of Parliament’s intention. Dr Davidson during the debates confirmed the phrase “except as otherwise provided for in the Constitution” in art. 58(1) is directed to art. 109(1) and other mandatory two-thirds vote provisions. Mr Harrison invites the court to draw an inference that because art 58(1) is directed to the likes of art. 109(1), that art. 58(2) must also apply to a vote under art. 109(1).

- f) Furthermore, Mr Harrison submits the Constitutional Debates, contain no suggestion that the prohibition on the Speaker exercising a deliberative vote was not one of general application to all occasions on which the Speaker is presiding over the Legislative Assembly. Moreover, had the Constitution intended to confer on the Speaker a free-standing deliberative vote in cases where majority voting under art. 58(1) was not permitted, it would have said so.
- g) Mr Harrison submitted that art. 58, titled “Voting” is one of a series of provisions in Part V of the Constitution governing and constraining the powers and proceedings of Parliament. He said, it cannot sensibly be argued that the Part V provisions, other than art. 58 – being arts. 54, 55, 56, 57, 59 and 60 in particular - are inapplicable to a third reading conducted under art. 109(1). When considered in that context, there is no warrant to “read down” art. 58(2).
- h) The only capacity that the Speaker participates in at a third reading vote under art.109(1) is as the person presiding over a sitting of the Legislative Assembly.
- i) Mr Harrison submitted it would be extraordinary if not perverse to argue that Parliament intended for the Speaker not to vote, except in the event of an equality of votes, in the first and second readings, but then have a deliberative vote in the third reading. Parliament could have provided for that outcome, had that been its intention.

#### *The Speaker’s submissions*

[17] The position of the Hon Speaker is set out in his statement of defence and notice of opposition:

- a) Art. 58(1) is expressly subject to any contrary provision in the Constitution and it has no application to votes under art. 109(1).
- b) Members of Parliament have a right and duty to vote, which is affirmed in art. 44.
- c) Art. 58(2) expresses a limited restriction on that right and duty in respect of the Speaker – that the Speaker shall not have a deliberative vote. Authority supports an interpretation that the limited restriction should not apply to art 109 votes.
- d) Even if the Applicants’ interpretation is correct, it does not follow the CAA was not lawfully passed:

- (i) Art 58(2) may be applied to art 109(1) to determine results where neither one third in opposition nor two thirds in support are achieved.
- (ii) It would appear incorrect that a speaker's membership is used to calculate the value of two-thirds of all members including vacancies, but the Speaker is not allowed to vote under art. 109. Mr Keith submits a coherent way of interpreting art. 109 is for the Speaker's membership of the Legislative Assembly to be counted for both purposes or for neither.

*The Attorney General's submissions*

[18] The Attorney General submits the role of the Speaker adheres these principles:

[5] In parliamentary democracies, the Speaker occupies a pivotal position. The efficient functioning of the Legislative Assembly of Samoa depends very much on the Speaker. As in other countries, the Speaker must be impartial. The Speaker is Parliament's person. He or she presides over the deliberations of the Legislative Assembly, maintaining decorum, and determining points of procedure.

[19] Mr Finlayson made the submission that the exception contained in art. 58(1) refers to provisions with a voting formula that is different to that provided for in that article (art. 58). Two-third majority vote requirements are related to the removal of tenured office holders - the Head of State, Council of Deputies, Chief Justice, Auditor General and the President of the Land and Titles Court; and the amendment of the Constitution.

[20] Article 58 does not apply to circumstances where specific procedural rules are prescribed, as signalled by the introductory phrase "except as otherwise provided." Mr Finlayson contends that, as a matter of constitutional interpretation, specific provisions take precedence over general ones. On that basis, the operation of art. 58(2) is confined to circumstances where decisions are determined by a simple majority of Members present. For this reason, Mr Finlayson further submits the requirements of art. 58 do not govern voting on constitutional amendments under art. 109. This is because art. 109 falls within the scope of the exception contemplated by art. 58(1). In cases involving significant constitutional measures—such as amendments to the Constitution or the removal of the Head of State—it is argued that the specific provisions governing those matters prescribe the way voting is to occur.

[21] It was submitted that had been intended that the Speaker could never cast a deliberative vote, then Parliament would have expressly provided for that particularly in light of Parliament removing those questions out of the provision dealing with simple majority votes.

[22] Finally, the Attorney General submits that art. 58 deals with votes to be taken on 'ordinary' legislation in the Legislative Assembly. It does not address, nor does it cover or intended to cover, votes that require a two-thirds majority of the total number of Members (including vacancies). The submission is that there were 53 members of Parliament entitled to vote, of whom 36 cast a vote in favour of the proposal to amend the Constitution. The 36 Members included the Speaker, and the requisite two-thirds majority was achieved.



## DISCUSSION

### The legal principles and guidance

[23] My determination rests on an attempt to interpret the Constitution in the way counselled by distinguished jurists who at one time led the judicial arm of government in Samoa – the judiciary. In the seminal decision of the Court of Appeal in *Attorney General v Olomalu* [1982] SamoaLawRp 3; [1982] WSCA 1 at 14, their Honours contemplated the question of how the Samoan Constitution should be interpreted:

We have already indicated our agreement that the constitution should be interpreted in the spirit counselled by Lord Wilberforce in *Fisher's* case. He speaks of a constitutional instrument such as this as *sui generis*; in relation to human rights of a “generous interpretation avoiding what has been called the austerity of tabulated legalism”; of respect for traditions and usage which have given meaning to the language; and of an approach with an open mind. This involves, we think, still giving primary attention to the words used, but being on guard against any tendency to interpret them in a mechanical or pedantic way.

This approach to interpretation was applied in *In re the Constitution, Pita v Attorney General* [1995] WSCA 6. *Pita* has been applied more recently in *Electoral Commissioner v FAST Party* [2021] WSCA 2 at [15] – [17], where at [25] the Court held the Constitution is given its best effect when it resolves ambiguity in favour of the promotion of human rights; All the parties in this case have referred to *Olomalu* and *Pita* as important in the context of this case.

[24] It is noteworthy the Court of Appeal in *Pita* identified a three-stage inquiry, which brings together the observations in *Fisher* adopted in *Olomalu*. In approaching its task of interpreting the Constitution of the Independent State of Samoa, a Court should:

- a) consider the words of the provisions principally in issue;
- b) then consider the constitutional and legal context in which they appear;
- c) have regard to the wider social and historical context in which they are to be understood.

I propose to follow this approach and structure, and to apply the principles of the Acts Interpretation Act 2016 (“the AIA”) to reach a determination in this matter.

[25] The AIA provides that an Act must be interpreted in the manner that best corresponds with the intention of Parliament: s. 7(2) AIA. The intention of Parliament is derived from the words of the Act, having regard to the plain meaning of the words; the technical meaning of any technical words; the whole of the Act and the specific context in which the words appear; the headings and any limitation or expansion of the meaning of words implied by them; grammar rules of language, conventions of legislative drafting and punctuation: s 7(3) AIA. If after carrying out this exercise the meaning contended for leads to an ambiguity, or a result which cannot reasonably be supposed to correspond with the intention of Parliament, then the words are to be given such fair, large and



liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit: s. 7(4) AIA.

*The words principally in issue*

[26] The Constitution of Samoa is unique, of its own kind, that is what is meant by the phrase *sui generis*, used by Lord Wilberforce. Whilst regard may be had to Constitutions from other countries, primary regard must be given to the words used in Samoa's Constitution.

[27] The relevant provisions containing the words in issue are contained in arts. 58 and 109. The provisions have been reproduced in full above [17], and are reproduced in a pared back form in the next paragraphs to enable clearer focus to be on the relevant words principally in issue:

[28] Art. 58 provides:

**58. Voting - (1)** Except as otherwise provided in this Constitution, every question before the Legislative Assembly shall be decided by a **majority of the votes of the Members of Parliament present.**

**(2)** The Speaker, ..., shall not have a deliberative vote but, in the case of an equality of votes, shall have a casting vote.

(emphasis added)

[29] Art. 109 provides:

**109. Amendment of Constitution - (1)** Any of the provisions of this Constitution may be amended or repealed ... and new provisions .... inserted ... by Act, if a bill for ... such purpose is **supported** at its third reading by the **votes of not less than two-thirds of the total number of Members of Parliament** (including vacancies) ...

**(2)** A certificate under the hand of the Speaker that a bill has been passed under the provisions of clause (1) shall be conclusive and shall not be questioned in any Court.

(emphasis added)

[30] The two-thirds majority approval is also used in the following provisions – these are the provisions which the opening words of art. 58(1) “except as otherwise provided for in the constitution”, apply:

**Art. 21 – Removal of the Head of State**

21(2) The Head of State may be removed from office by the legislative assembly on the ground of misbehaviour or of infirmity of body or mind.

21(3) No proposal for the removal from office of the head of state... shall be effective unless:

(c) the motion has been agreed to by **not less than two-thirds of the total number of Members of Parliament** (including vacancies).

(emphasis added)

#### **Art 25 – Council of Deputies**

25(7) the legislative assembly, on a motion carried by **not less than two-thirds of the total number of Members of Parliament** (including vacancies), remove from office a member of the council of deputies on the ground of stated misbehaviour or of infirmity of body or mind.

(emphasis added)

#### **Art. 67 Removal of Chief Justice**

67(6) The Chief Justice shall not be removed from office, except by the Head of State on an address by the Legislative Assembly carried by **not less than two-thirds of the total number of Members of Parliament** (including vacancies), praying for his or her removal from office on the grounds of stated misbehaviour or infirmity of the body or mind, always prescribed by Act.

(emphasis added)

#### **99F Removal of Controller and Auditor General**

99F (3)(b) Before advising the Head of State under clause (1), the Prime Minister shall: lay before the Legislative Assembly a full statement of the grounds for the removal of the Controller and Auditor General for a resolution of the Legislative Assembly to be passed by **at least two-thirds of the total number of Members of Parliament** (excluding any vacancy).

(emphasis added)

#### **104D Removal of President of the Land and Titles Court**

104D(3) The President shall not be removed from office, except by the Head of State on an address of the Legislative Assembly **carried by not less than two-thirds of the total number of Members of Parliament** (including vacancies), praying for his or

her removal from Office on the grounds of stated misbehaviour or of infirmity of body or mind, or as prescribed by Act.

(emphasis added)

[31] Notably the two-thirds vote refers to the total number of Members of Parliament and not just those present, as is the case in art. 58. The phrases “not less than”, “at least”, and “carried by” appear to convey the same meaning – that two-thirds support of the total of all the members is required for these questions to pass. A removal vote needs to have the solid backing of most of the members. Similarly, the constitution may only be amended if it has the solid backing of most of the members. Perhaps notable for its absence - in none of these constitutional provisions is there anything in the language used that the speaker is not permitted to vote.

#### *Definitions of the word in issue*

[32] The plain meaning of the word ‘**total**’ is plain. I accept the definition of the word “total”, in its noun form, as used in art. 109(1), has as its ordinary meaning the meaning in the online Cambridge Dictionary: “*the amount you get when several smaller amounts are added together*”.<sup>1</sup>

[33] The term ‘**Member of Parliament**’ is defined in art. 44(4), which provides that all Members of the Legislative Assembly (including additional Members) shall be known as Members of Parliament. The Members of the Legislative Assembly are defined by either their election to one of Samoa’s 51, currently, electoral constituencies or as an additional Member.

[34] The additional Member I have just referred to is a concept that is unique to Samoa’s democratic framework. A safeguard for women representation in Parliament, inserted by an HRPP Government in art. 44(1A), provides that a minimum of 10% of the total number constituency seats be women members. The Court of Appeal in the *Electoral Commissioner v FAST Party* referred to above at [26], held this 10% safeguard for women representatives meant 6 women members, in a Parliament that had 51 constituency seats. At the 2021 General Election, four women were elected to constituency seats. The highest polling two women candidates were then elected under art 44(1A) and known as additional Members of Parliament.

[35] The word ‘**equality**’ means the quality or state of being equal.<sup>2</sup> The parties did not argue the word equality was a term of art or a euphemism to generally describe an impasse or a deadlock in votes which needed to be resolved by way of a casting vote, particularly one that may have arisen in the context of a two-thirds vote.

#### *Interpretation of the words in issue*

[36] In my view, Parliament has permitted the Speaker to vote in two-thirds majority votes. It is the only sensible way to read arts. 58 and 109. This conclusion follows from a plain reading of

---

<sup>1</sup> <https://dictionary.cambridge.org/dictionary/english/total>

<sup>2</sup> <https://www.merriam-webster.com/dictionary/equality>

art. 109(1), which unlike in the case of simple majority votes, does not contain an expression that a speaker is not to have a deliberative vote. The prohibition sought to be introduced into art. 109(1) arises by way of an interpretation of art. 58 which is not supported by the language used in that clause.

[37] Mr Keith's argument that had Parliament wanted to impose a prohibition, they would have done so appears compelling; it would have been carried out using the same type of language used to establish the prohibition against voting in simple majority votes. And as Mr Finlayson submits Parliament knew that it was removing the two-thirds votes from the ambit of art. 58. In other words, the fact that Parliament did not apply the prohibition to voting practices that were dealt with elsewhere in the Constitution means that Parliament did not intend the prohibition should be extended to or indeed follow the voting practice provided for in another part of the Constitution.

[38] Respectfully, an analysis of the language supports the Respondents submissions. I consider the plain meaning of the words in art. 58 do not support the Applicants' expansive interpretation.

[39] The prohibition contended for lies in the phrase "shall not have a deliberative vote". However, the phrase does not end with the word "vote"; it continues by setting out an exception. The issue, then, is whether that exception affects the meaning of the preceding words. In my view, it does. The phrase in art. 58(2) reads: "shall not have a deliberative vote but, in the case..." Notably, a comma follows the word "but." This suggests the word "but" functions in the phrase as a coordinating conjunction, which links contrasting ideas—here, it contrasts the general voting rule and the exception to that general voting rule. Had the comma appeared after the word "vote" and before "but," the word "but" might be read as a preposition meaning "except", which seems to be how the Applicants' want to interpret the phrase. Respectfully, that is an incorrect interpretation.

[40] If that analysis of art 58 is wrong, one only needs to turn to the wording in art. 109(1), to see that the Applicants' interpretation cannot be correct. Article 109(1) provides for one of the matters Parliament removed from the simple majority ambit of art. 58. Clearly, art. 109(1) unlike art. 58, does not refer to a speaker being prohibited from casting a deliberative vote. This suggests as a matter of interpretation that having provided for a prohibition in relation to simple majority votes, Parliament intended there should be no similar prohibition in relation to two-thirds votes. This means the Speaker is permitted to vote in a two-thirds matter.

[41] The Speaker's ability to vote in two thirds matters is reinforced by Parliament using the total number of members as the yardstick by which a two-thirds majority might be achieved, as opposed to those who are present (as provided for in art 58 simple majority votes). This indicates Parliament must have intended for all members to cast a vote to satisfy the constitutional mandate required. In this regard, there is something in Mr Keith's submission that it would be incorrect to attribute to Parliament the intention that the two-thirds majority vote of support of a total of all Members and vacancies, would be achieved with the total of all Members and vacancies, less one, the Speaker.

[42] I am satisfied that analysing the words principally in issue suggests the Applicants' argument cannot succeed. The meaning of the words Parliament used is normally dispositive. However, it is important to look at the other areas of inquiry so see if a different result should be reached.

### *Constitutional and legal context*

[43] The Applicants' primary argument, to which Mr Harrison returned to time and again is that the Speaker, as the Presider over the sittings of the Legislative Assembly, is not permitted to cast a deliberative vote and this general prohibition applies to all votes, including votes under art. 109(1). In effect, all other provisions in the constitution bend to the will of the prohibition.

[44] The essence of Mr Keith's art. 44 argument, as understand it, is that the duty to vote is so fundamental the role of a member of Parliament that it ought not to be displaced without clear words from the Legislature. For this reason, he opposes the Applicant's view that the art 58(2) prohibition extends beyond simple majority votes to two-thirds majority provisions, which are all silent on the matter of the Speaker voting.

[45] We have a saying the Pacific that we look back to look forward. Let me refer to the Political Debates, as permitted under s. 7(5) AIA, in particular this statement from Dr Aikman:

If I might repeat the point I made earlier, **the people of Western Samoa through their elected representatives will be in complete control of Samoa** and one of the reasons why there is to be a 90 days gap between the 2nd and 3rd reading, of a bill to amend the constitution is to enable **people to have a chance to express their views to their own members**; so that if there are any objections to the amendment they can be found out.<sup>3</sup>

(my emphasis)

[46] This statement implies Dr Aikman considered a speaker would have a determinative vote in relation to not just a constitutional amendment, but in relation to motions for the removal of the Head of State, a member of the council of deputies, the Chief Justice, the President of the Land and Titles Court, and the Auditor General. It is difficult to see how the people of a Speaker's constituency could ever enjoy the benefits of the Constitution - of having control of Samoa, through their representatives casting of a determinative vote.

[47] Dr Davidson's advice concerning art 58, a provision that has not undergone any material revision over the past 60 odd years, is as follows:

Coming to Article 58, the main part of Clause (1) is clear enough. **It provides that most matters will be decided by a majority of the votes of members of Parliament present when the matter is put to the vote.** But, as members know it is necessary to have the words **"except as otherwise provided in this Constitution at the beginning because there are some matters which require a vote of two-thirds to become effective.** Briefly, a two-thirds

---

<sup>3</sup> 1960 Constitutional Convention Debates p71

vote is required to pass the motion to remove the head of state or a Member of the Council of Deputies or a Judge and at the third reading of a Bill to amend any part of the Constitution.

In Clause (2) the wording has been altered to make it clearer; but the meaning has not been changed. That Clause provides **that the Speaker**, or whoever else is presiding over a particular sitting of the Assembly, **shall not have a deliberative vote but if on any matter the Assembly is divided equally, then the Speaker shall have the casting vote.**<sup>4</sup>

(my emphasis)

[48] Dr Davidson suggests the intention of art 58(1) was to provide for the members intention to have some votes be subject to a higher voting scrutiny. In effect, the words “except as otherwise provided” signalled a ringfencing of matters that required a two-thirds vote to become effective. These matters were intended to fall outside of the scope of art 58, and as Mr Finlayson, be dealt with in the manner provided for in that part of the constitution.

[49] Dr Davidson did not discuss or refer to a larger role for the prohibition of a deliberative vote in art 58, such as in the art. 109 context or those of other two-thirds majority votes.

[50] The following commentary from Dr Davidson is also noteworthy in the context of the question raised in this proceeding:

As in the case of any proposal to remove the Head of State or the Chief Justice, the Committee thought that it was appropriate in this case to require that the 2/3 majority should be one in which **vacancies were counted as votes against the proposal to avoid any chance that the amendment might slip through because of one or two seats being vacant at the time.** In other words, the purpose of this Article is to make it quite certain that no provision in the Constitution is amended, unless **there has been enough time for discussion of the amendment by the people of Samoa** and unless it has the **solid backing of most** of the members of Parliament, represented by the **2/3 majority** (including vacancies).<sup>5</sup>

(my emphasis)

[51] There are two points that arise. First, the reference to a solid backing speaks to the need for most Members to agree to support a question. In this case the argument about whether a two-thirds majority has been reached turns on fractions – 35.3 versus 36 votes. I would have thought that both numbers would have been evidence of solid support for the motion, avoiding the danger of the austerity of tabulated legalism.

[52] The second point concerns the explanation of how vacancies were to be counted. This is also quite important in terms of the difficulties in applying the Applicants’ expansive prohibition. Dr Davidson said vacancies would be counted as votes against a question, to avoid the chance of an amendment slipping through on account of one or two seats being vacant. If the Speaker is present, but is not able to vote, then how is his vote to be treated? If treated as a vacant vote (because the Speaker only sits in Parliament in the capacity of presider, as Mr Harrison submits), it would be

---

<sup>4</sup> Above n1, 526

<sup>5</sup> Above n 1 p 738

counted as a vote against the question, but is that not a deliberative vote? If the Applications' expansion prohibition submission is correct, it is not at all clear to me how to reconcile Parliament appearing to introduce a speaker's deliberative vote by the back door, if you will.

***The wider and social historical context in which the words are to be understood.***

[53] This interpretive aid does not directly arise under the AIA, except by s. 7(6), and common law authorities such as *Pita*. Its importance in the interpretation of the constitution is underscored by the nature of the issues of Samoan custom the Court of Appeal grappled with in *Olomalu*.

[54] Add as a layer to *Olomalu* the observations of the Court of Appeal's in *Sia'aga and others v OF Nelson Properties Ltd* [2008] WSCA 14 that the Samoan Constitution recognises Samoan custom and usage, as well as the English common law. The Court of Appeal encouraged a blending of the sources of law in a manner is most in keeping with the values of the Samoan people and her institutions.

[55] This brings me to a powerful point made by Ms Taulapapa Brenda Heather-Latu. Learned counsel submitted the Applicant's argument would seriously erode a Speaker's ability to represent his constituency, and the people of the Speaker's constituency would not have a voice when matter was put to the vote. As the longest serving Attorney General of Samoa, Taulapapa's submission deserves great respect. Mr Harrison submitted that affected constituents could participate in the public consultations, which are held following the second reading, and their voices could be heard in that way. It is difficult to appreciate how Mr Harrison's approach adequately meets the aspirational promise, the cornerstone principle behind adopting a constitution in the first place – to enable Samoan people to have complete control of Samoa through their representatives.

[56] In my view, the interpretation contended for by the Applicants requires the Court to answer three questions in relation to two-third majority votes – (1) is the Speaker permitted to cast a deliberative vote, and in my view the Speaker is so permitted on the present wording of arts. 58 and 109(1); (2) if the Speaker is not permitted to vote, may he or she vote to break the equivalent of a tie in a two thirds vote. And (3) if the Speaker is prohibited from all voting at a two-thirds vote then should the Speaker's status as a Member of Parliament be taken into account when determining total number of Members of Parliament. The Court can answer the first of these questions but the other two should be answered by Parliament because these are policy questions that rely on the political mandate, and accountability, to determine these issues.

[57] In other words, if there is a "gap" in the law then this should ordinarily, under the doctrine of separation of powers and principle of comity, be addressed by Parliament. Parliament has the authority and mandate to scrutinise whether a bar on deliberative votes extends to two-thirds votes, and what of the Speaker's role. This is a debate that requires public consultation involves the meaning of representative government.



[58] The public interest also requires discussion about the principles which apply to the issue of impartiality being as critical as it is in the smooth and fair functioning of a sitting of the General Assembly. When it comes to voting on questions coming before Parliament, our law provides that impartiality is not an absolute principle. Our Parliament has clearly expressed that in the art. 58(2) exception. One only needs to look at our close neighbours New Zealand to see that following the introduction of the Mixed Member Proportional system, a speaker has a deliberative vote that is automatically included in the party vote total. This may be something of interest to Samoa's Parliament. The learned authors in Joseph submits the experience in New Zealand is that although a deliberative vote is in the nature of a political act it does not engage the Speaker in political matters before the House, and the Speaker remains impartial and is careful not to be drawn on party political issues.<sup>6</sup>

## DECISION

[59] For the reasons set out above, I am unable to accept the Applicants interpretation of art. 58(2), which purports to apply the prohibition against casting a deliberative vote to a constitutional amendment vote under art. 109. I find that the Speaker was permitted to vote at the third reading of the CAA, and that with the Speaker's vote the two-thirds majority support of the total of all the members including vacancies has been satisfied. The result of the third reading vote was properly certified.

[60] It follows that the Applicants application for the making of various declarations is declined.

[61] The interim order against restraining the commencement of the Constitution Amendment Act 2025 is rescinded, with the effect that the CAA commenced on 7 April 2025.

[62] Costs are reserved. The issues in this case raise important constitutional issues, and the parties are to bear their own costs.

[63] I thank counsel for their very helpful submissions.



*S. Perese*  
CHIEF JUSTICE

---

<sup>6</sup> Joseph on Constitutional and Administrative Law, Westlaw, Thomson Reuters, at 10.5.1 (3)