

BETWEEN:

HON. PHILIP BOEDORO
SPEAKER OF PARLIAMENT
Appellant

AND:

HON. MOANA KALOSIL CARCASSES
First Respondent

HON. ARNOLD PRASAD
Second Respondent

HON. JEAN YVES CHABOD
Third Respondent

HON. TONY NARI
Fourth Respondent

HON. PASCAL IAUKO
Fifth Respondent

HON. HOSEA NEVU
Sixth Respondent

HON. JOHN AMOS VACHER
Seventh Respondent

HON. THOMAS LAKEN
Eight Respondent

HON. SAMSON SAMSEN
Ninth Respondent

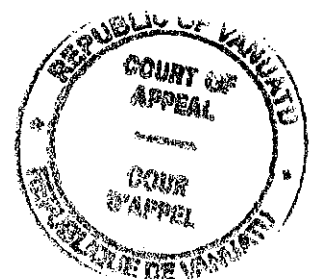
HON. MARCELLINO PIPITE
Tenth Respondent

HON. PAUL TELUKLUK
Eleventh Respondent

HON. STEVEN KALSAKAU
Twelfth Respondent

HON. KALFAU MOLI
Thirteenth Respondent

HON. TONY WRIGHT
Fourteenth Respondent



HON. RIALUTH SERGE VOHOR
Fifteenth Respondent

HON. JONAS JAMES
Sixteenth Respondent

REPUBLIC OF VANUATU
Seventeenth Respondent

Coram: *Hon. Chief Justice Vincent Lunabek*
Hon. Justice John von-Doussa
Hon. Justice Ronald Young
Hon. Justice Daniel Fatiaki
Hon. Justice Dudley Aru
Hon. Justice Mary Sey
Hon. Justice Stephen Harrop

Counsel: *Mr Jack Kilu for Appellant*
Mr Avock Godden for First to Eighth Respondents
Mr Robin T. Kapapa for the Ninth to Twelfth Respondents
Mr Collin Leo for the Thirteenth to Sixteenth Respondents
Mr Ken Tari (SLO) for Seventeenth Respondent

Date of Hearing: *Thursday 30 April 2015*

Date of Judgment: *Friday 8 May 2015*

JUDGMENT

1. This is an appeal from the judgment of Saksak J delivered 2 December 2014 in which he granted relief to the present Respondents (except the Republic of Vanuatu) as petitioners claiming under Articles 6 and 53 of the Constitution. He held that their constitutional rights had been infringed by the decision of Parliament on 25 November 2014 suspending them from Parliament and that the said decision was invalid, void of no effect.



2. The relief granted on the application was –

“(a) A DECLARATION that the Constitutional rights of the Petitioners' pursuant to Articles 5(1)(d), 5(2)(a) and (b), 16, 17, 21, 28, 43(2) and(1) of the Constitution have been infringed.

(b) A DECLARATION that the purported Motion to suspend the Petitioners from Parliament amounts to breaches of their Constitutional rights and is therefore invalid, void and of no effect.

(c) A DECLARATION that the decision and/or ruling made on 25 November 2014 to suspend the Petitioners from Parliament is invalid, void and of no effect.

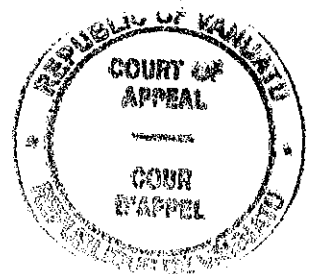
(d) An ORDER quashing the decision to suspend and exclude the petitioners from Parliament.

(e) An Order that the First Respondent and the Police be restrained from preventing access of the Petitioners into Parliament from the date of this Judgment.

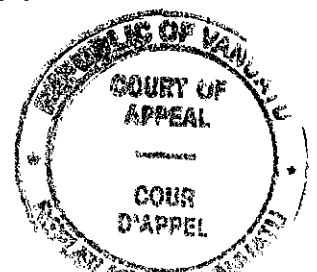
(f) An ORDER that the First and Second Respondents will pay the Petitioners' costs of this action on the standard basis as agreed or taxed by the Court.

(g) A copy of this Judgment be served on the Police.

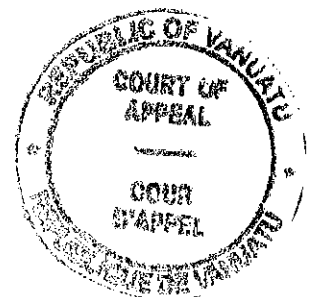
3. Before we hear this appeal, we grant the appellant leave to appeal out of time because of the importance of the constitutional question involved relating to the operation of the Government of this Republic and the rule of law.



4. At its heart, this case is about the interface between the Constitution, the powers of Parliament and the rights of its members, and the Standing Orders of Parliament.
5. The details of factual circumstances relating to those issues are set out in the judgment under appeal and counsel submissions in this court. They are not in dispute. They are summarised as follow:
 1. On the 24th October, 2014 the Speaker of Parliament summoned Parliament to sit in its 2014 Second Ordinary Session commencing on 18th November, 2014.
 2. On 19th November 2014, "Motion N.11 of 2014" to suspend the 16 Members of Parliament on the opposition side was lodged in Parliament by the Honourable Prime Minister, Joe Natuman.
 3. The reason or purpose to initiate the motion to suspend the 16 members of Parliament was an allegation that Hon. Moana Carcasses Kalosil had deposited a Westpac cheque for an amount of 35 million vatu into his personal account at the ANZ Bank for the purposes of lending members of Parliament including the respondents 1,000,000 Vatu (500,000 Vatu for one).
 4. In his sworn statement filed 30 November 2014, the Hon. Joe Natuman, Prime Minister of Vanuatu stated that the actions in taking the loans from the First Applicant (First Respondent) has greatly tarnished the integrity of Members of Parliament as a whole and certain provisions of the constitution and The Leadership Code Act have been breached by their actions. As the current Prime Minister of Vanuatu, it is one of his duties to take necessary steps, within his powers, to protect the integrity of Members of Parliament and the Parliament itself.



5. On 21st November, 2014 the Opposition then lodged "Motion No.12 of 2014", a motion of no-confidence against the Honourable Prime Minister.
 6. On 25th November, 2014 Parliament sat and debated the motion to suspend the 16 members of Parliament, which motion was carried with 27 votes in favour, 22 votes against and 1 abstention.
 7. The 16 Opposition Members were effectively suspended from Parliament sittings at that point.
 8. Motion N.12, (motion of no confidence in the Prime Minister), was initially scheduled to be debated on 28th November, 2014 but in the interest of justice and to maintain the status quo between the parties, the Appellant moved the debate on this motion to Tuesday 2 December 2014. Motion No.12 of 2014 was withdrawn after the Supreme Court had handed down its judgment in favour of the 16 Opposition Members (the Respondents).
 9. Due to their suspension by Parliament on 25th November, 2014, the 16 members then filed an "Urgent Constitutional Petition" on 27th November, 2014 alleging that their suspension by Parliament had violated their constitutional rights.
 10. Saksak J heard the petition on 1st December, 2014 and delivered his Judgment on 2nd December, 2014 which is now being appealed.
6. Although various provisions have to be considered, those of central importance to the issue are Articles 2; 4(1); 5(1)(d) and (2) (a)(b); 6; 21 (1)(3) and (5) and 53 of the Constitution, and Order 40(4) of the standing orders of Parliament.



7. The relevant Articles of the Constitution provide:-

"Article 2. The Constitution is the Supreme law of the Republic of Vanuatu"

"Article 4.(1) National sovereignty belongs to the people of Vanuatu which they exercise through their elected representative.

..."

"Article 5.(1) (1) The Republic of Vanuatu recognises, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health -

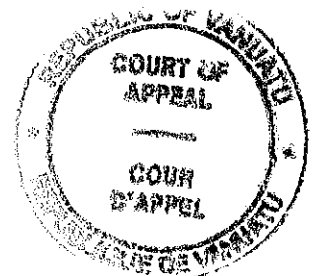
(d) protection of the law;

(2) Protection of the law shall include the following –

(a) everyone charged with an offence shall have a fair hearing, within a reasonable time, by an independent and impartial court and be afforded a lawyer if it is a serious offence;

(b) everyone is presumed innocent until a court establishes his guilt according to law;

..."



"Article 6.(1) Anyone who considers that any of the rights guaranteed to him by the Constitution has been, or is likely to be infringed may, independently of any other possible remedy, apply to the Supreme Court to enforce that right.

(2) The Supreme Court may make such orders, issue such writs and give such directions, including the payment of compensation, as it considers appropriate to enforce that right."

"Article 21. (1) Parliament shall meet twice a year in ordinary session.

(2)...

(3) Unless otherwise provided in the Constitution, Parliament shall make its decisions by public vote by a simple majority of the members voting.

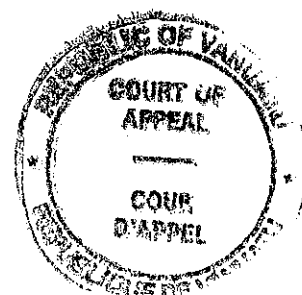
(4)...

(5) Parliament shall make its own rules of procedure."

"Article 53. (1) Anyone who considers that a provision of the Constitution has been infringed in relation to him may, without prejudice to any other legal remedy available to him, apply to the Supreme Court for redress.

(2) The Supreme Court has jurisdiction to determine the matter and to make such order as it considers appropriate to enforce the provisions of the Constitution."

8. The relevant provisions of the Standing Orders of Parliament provide:-



Order in Parliament

40. (1) *The Speaker, after having called the attention of Parliament to the conduct of a Member who persists in irrelevance or tedious repetition either in his own arguments or of the arguments used by other Members in debate, may direct him to discontinue his speech.*

(2) *If any Member :*

(a) *persistently and wilfully obstructs the business of Parliament*

(b) *is guilty of disorderly conduct;*

(c) *uses objectionable words which he refuses to withdraw;*

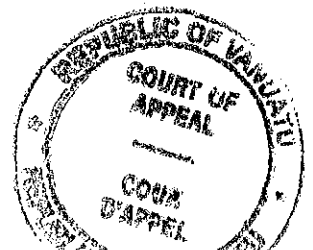
(d) *persistently or wilfully refuses to conform to any Standing Order;*

(e) *persistently or wilfully disregards the authority of the Speaker;*

The Speaker shall order the Member to withdraw immediately from Parliament and its precincts during the remainder of that sitting.

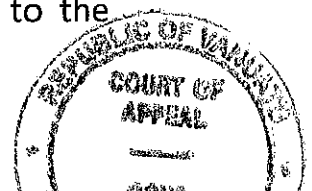
(3) *In the case of grave disorder arising in Parliament, the Speaker may adjourn Parliament without question put or suspend any sitting for a time determined by him.*

(4) ***Parliament may, on a motion moved by a Member, suspend any Member from the service of Parliament for such period indicated in the motion. A Member who is suspended shall***



not be admitted to Parliament or its precincts during the period of suspension. [Emphasis]

- (5) *Any motion presented in accordance with paragraph (4) shall be in writing and seconded and a notice of 2 clear days shall be given thereof to the Speaker.*
9. The main point on appeal is a narrow one. It concerns the interpretation of Order 40 (4) of the Standing Orders of Parliament.
10. The appellant advances this appeal on two following grounds:
1. Whether Parliament has the power to suspend its members under Standing Order 40 (4) in the interest of preserving the integrity of Parliament; and
 2. Whether the 16 members' suspension by the Parliament had infringed their constitutional rights.
11. Mr Kilu accepts that if Parliament has power to suspend its members under *Order 40 (4)* of the Standing Orders of Parliament in this case, then there will be no infringement of the constitutional rights. He also accepts, however, that if Parliament does not have power to suspend its members in this case under Order 40 (4) or if that the power to suspend exists but it was exercised outside the scope of Standing Orders 40 (4), there will be infringement of the constitutional rights.
12. We deal with the two grounds of appeal together.
13. In the court below, the Respondents contended that Standing Orders 40 (4) does not give power to either the Speaker or Parliament to pass a motion to suspend the Respondents for acts or conducts alleged to be done by them outside of Parliament. Mr Kilu contended to the

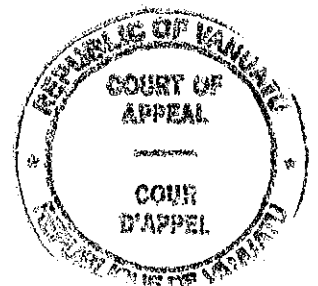


contrary that Standing Order 40 (4) gives power to the Parliament but not the Speaker to suspend its members.

14. Saksak J rejected the contentions of the Appellant when he said (at p17 & 27) :

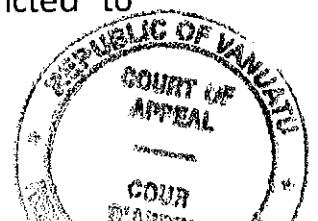
“Standing Order 40 provides for Order in Parliament. It provides powers both to the Speaker and to Parliament. Nowhere in that Standing Order does it make provision for discipline of members for conducts or actions done outside of Parliament. The case of Tari –v- Natapei is clearly applicable to this case.”

15. In this court Mr Kilu repeated the argument he had advanced before Saksak J. He submitted that the 16 members conduct outside Parliament had the effect of demeaning the integrity of Parliament, and this justified Parliament acting under Standing Order 40 (4) as it did in passing the motion suspending them. Assuming that the 16 members had behaved as asserted in the notice of motion, their conduct was so improper that it would undermine public confidence in the ability of those members, and each of them, to properly perform their functions as members of Parliament. For that reason their conduct outside of Parliament would be damaging to the integrity of Parliament and the parliamentary process. However the conclusion that conduct outside Parliament can in this way demean the integrity of Parliament rests upon the premise that the members of Parliament were in fact guilty of the conduct asserted against them. The asserted facts must first be established before the conclusion can be drawn that their conduct had demeaned the integrity of Parliament.



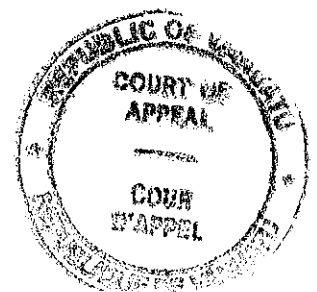
16. Where the conduct brought into question is conduct that if true would offend against the laws of the land, each person against whom the improper conduct is alleged, as a fundamental right protected by Article 5(2)(b), is entitled to be presumed innocent until proved guilty according to law. The proof of guilt is a matter entrusted by the Constitution to the courts of the Republic of Vanuatu not to Parliament.
17. Standing Order 40 clearly empowers Parliament to suspend a member for conduct in Parliament. Parliament itself will know what has occurred in those circumstances.
18. As to conduct by a Member of Parliament outside Parliament and the power of suspension by the Speaker this Court in *Tari .v. Natapei* [2011] VUCA 18 said

“It is undisputed that the Speaker purported to remove the six members of Parliament for the session for behaviour which he alleged they had committed outside of Parliament. We have no doubt that Standing Order 40 covers and is directed only to conduct within the chamber in the course of a sitting in Parliament. This Standing Order could never provide a basis for what the Speaker purported to do”.
19. This Courts’ comments in relation to Standing Order 40 related to the Speaker’s powers which were the subject matter of the judgment. Standing Order 40 (1), (2) and (3) specifically relate to the conduct of members of Parliament in Parliament and the Speaker’s power to deal with that conduct.
20. This Court in *Tari* did not consider the power of Parliament in Standing Order 40(4) to suspend Members of Parliament by Parliamentary Motion. Sub-rule (4) is not specifically restricted to



conduct in Parliament unlike sub-rules (1), (2) and (3). Sub-rule (4) is concerned with Parliamentary power rather than Speaker authority. Given those differences we do not consider the observations in **Tari** relating to Standing Order 40 are decisive of this case.

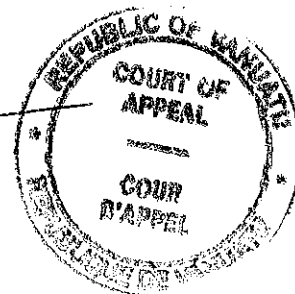
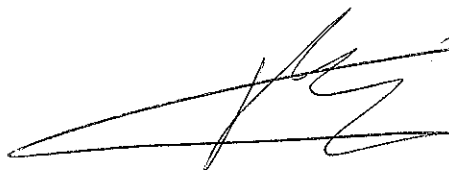
21. We do not consider that Standing Order 40(4), is limited only to conduct directly occurring in Parliament. Standing Order 40(4) is expressed in wide terms. We accept that Parliament is legitimately concerned about conduct of members outside Parliament where their conduct might damage the integrity of Parliament. We consider therefore that we should protect the wide ambit of Standing Order 40(4), subject as we have said to the facts being properly established according to law. As we have said, before Parliament could proceed to consider conduct outside Parliament the allegations against a member would have to be properly established. Where for example the misconduct alleged is of criminal conduct (including a breach of the Leadership Code) it will be for the Courts first to consider whether the allegations have been established. If the facts are found proved, Parliament is then free to act as it thinks appropriate on the facts established by the courts.
22. In the Present case none of the misconduct asserted against the 16 Respondents has been established according to law through the proper legal process.
23. We therefore uphold the judgment of Saksak J although for slightly different reasons and dismiss the appeal.



24. This case is an important constitutional case on a narrow but important question. The proper course to take is to make no orders as to costs.
25. Each party is to bear his own costs.

DATED at Port-Vila this 8th day of May, 2015

BY THE COURT



Vincent LUNABEK
Chief Justice