IN THE COURT OF APPEAL OF THE REPUBLIC OF VANUATU
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 23/2642 COA/CIVA

BETWEEN: **BRUNO LEINGKONE TAU**
Appellant

AND: **THE SPEAKER OF PARLIAMENT**
First Respondent

AND: **THE REPUBLIC OF VANUATU**
Second Respondent

Date of Hearing:	***10 November 2023***
Coram:	***Hon Justice Dudley Aru*** ***Hon Justice Viran M. Trief*** ***Hon Justice Mark O'Regan*** ***Hon Justice Richard White*** ***Hon Justice Edwin P. Goldsbrough***
Counsel:	***PJ Dunning and AE Bal for the Appellant*** ***G Blake for the First Respondent*** ***AK Loughman, Attorney-General and F Samuel for the Second Respondent***
Date of Decision:	***17 November 2023***

JUDGMENT

Introduction

1. The appellant, Mr Bruno Leingkone Tau, appeals to this Court against a decision of the Supreme Court dismissing his election petition: *Tau v Speaker of Parliament* [2023] VUSC 188. On 6 October 2023, this Court granted a stay of that decision until the resolution of the present appeal: *Tau v Simeon* [2023] VUCA 45.

2. The background to the election petition was that the appellant, a Member of Parliament (MP) for Ambrym, was told by the first respondent, the Speaker of Parliament, that he had vacated his seat by operation of s 2(d) of the Members of Parliament (Vacation of Seats) Act [CAP.174] (the Act) because he had been absent from three consecutive sittings of Parliament without having obtained permission from the Speaker to be absent.

3. Under art 54 of the Constitution, the jurisdiction to determine any question as to whether an MP has vacated his or her seat vests in the Supreme Court.

4. The second respondent abides the Court's decision. The Attorney-General made submissions to assist the Court, for which we are grateful.

Background

5. The appellant suffered a significant medical event in April 2023. On 24 July 2023 he travelled to South Korea for medical treatment. He returned to Vanuatu in September 2023. On the morning of 25 September 2023, before the fourth extraordinary session of Parliament began, the appellant was served with a letter from the Speaker informing him that his seat had been vacated by operation of s 2(d) of the Act. The Speaker then announced in Parliament that the appellant's seat was vacated.

6. Section 2(d) of the Act provides:

> ***2 Vacation of seats of members***
> *A Member of Parliament shall vacate his seat therein –*
> ...
> *(d) if he is absent from three consecutive sittings of Parliament without having obtained from the Speaker or, in his absence, the Deputy Speaker the permission to be or to remain absent.*

7. During the appellant's absence in South Korea, Parliament was convened on six occasions, though on three of those occasions no quorum was present. The six occasions on which Parliament was convened during the appellant's absence (noting whether a quorum was present or not) were:

10 August	*Third Extraordinary Session* • *No quorum.* • *Sitting adjourned to 16.08.23 at 2pm.*
16 August	*Third Extraordinary Session* • *Sitting 2.20pm to 5.40pm.* • *Session closed.*
17 August	*Second Extraordinary Session* • *No quorum.* • *Sitting adjourned to 22.08.23 at 8.30am.*
22 August	*Second Extraordinary Session* • *Sitting 8.41am to 9.05am.* • *Session closed.*
4 September	*Third Extraordinary Session*

- *Sitting 5.15pm to 7pm.*
- *Session closed.*

20 September — *Fourth Extraordinary Session*
- *No quorum*
- *Sitting adjourned to 25 September at 8.30am.*

8. The appellant was absent on each of these occasions. Parliament did not meet on any other occasion during the period he was absent.

Issues

9. The appellant argues that he was not absent from three consecutive sittings because the occasions when no quorum was present do not count as "sittings" for the purposes of s 2(d). As can be seen from the list above, that would mean he was absent only for the sittings on 16 August, 22 August, and 4 September. He says it is clear he had permission to be absent before the 4 September sitting. This means an important preliminary issue to be determined is whether the absence of a quorum at an occasion when Parliament is convened, leading to an adjournment, is a "sitting" for the purposes of s 2(d). We will address that issue first.

10. While the appellant accepts that he was absent on the occasions listed above, he argues that he did have the permission of the Speaker to be absent. An important aspect of this argument on behalf of the appellant is that the requirements for the obtaining of permission in s 2(d) are to be read in line with Standing Order 96(1) of the Standing Orders of Parliament, which provides that an MP may be excused by the Speaker from attending a sitting of Parliament on the grounds of illness and requires the MP to present a medical certificate to the Clerk to justify his or her absence. The role of Standing Order 96(1) in the interpretation of s 2(d) is the second issue we will address.

11. The third issue is whether the course of dealing between the appellant and Speaker over the course of his absence is such that the Court should find that he did have the permission of the Speaker to be absent on some or all of the occasions on which Parliament was convened during his absence. That is the third issue we will address.

The quorum issue

12. In the Supreme Court, the appellant argued that he was not absent for three consecutive sittings because the sittings were in different sessions of Parliament and, in the case of the 10 and 17 August sittings and that of 20 September, a quorum was not present and the sitting was adjourned. The

primary Judge rejected both of these arguments. The former argument is not pursued before us and we say no more about it.

13. In relation to the quorum issue, the primary Judge rejected the appellant's submission that there was no sitting of Parliament if there was no quorum. In doing so, he followed, as he was bound to do, a decision of this Court, *Carlot v Attorney-General (No 2)* [1988] VULawRp 21, [1980–1994] Van LR 407. In that case, this Court adopted the reasoning in the decision under appeal, to the effect that once the Speaker has entered the House and ascertained whether a quorum is present, a sitting will have taken place that will have lasted for at least five minutes. This Court added:

> *"We are encouraged in this by the wording of article 19(4) of the Constitution which states what must occur "... if there is no quorum at the first sitting ...". This indicates that there is a "sitting" although there may be no quorum. On each day when Parliament assembles and the Speaker takes the chair, there is a sitting."*

14. This Court applied *Carlot* in *Vatu v Muele* [2007] VUCA 4 at [26]. The Court observed in that case:

> *"It is a misconception to think that simply because there is no quorum, there has not been a meeting or a sitting. Absence of a quorum simply prevents the conduct of business at the meeting."*

15. The appellant accepted that the primary Judge correctly applied *Carlot* but argued that *Carlot* was wrongly decided and should be reversed. To our knowledge there is no case in which this Court has overturned one of its earlier decisions in a later case. The circumstances in which it would be appropriate for this Court to do so have not therefore been determined. For reasons we will come to, we do not consider that *Carlot* was wrong on the question of quorum, so it is not necessary for us to address the circumstances in which this Court would reverse one of its earlier decisions. We leave that for a case in which the point has been argued.

16. We indicate for the future that if a party to an appeal to this Court intends to ask the Court to reverse one of its earlier decisions, prior notice of that intention should be given at least two weeks before the commencement of the session at which the appeal is to be heard. Until this Court has settled on the criteria it would apply in a case in which it is asked to reverse an earlier decision, counsel should also address that issue, by reference to the decisions of comparable Courts on the same issue.

17. The term "*sitting*" is not defined in the Act. It is, however, defined in the Standing Orders of Parliament. That definition, which appears in SO 1 of the Standing Orders, is:

'Sitting' or 'Sitting day' means the period between the commencements of business on any day until the adjournment of business on that day and includes any period during which Parliament is in Committee of the Whole Parliament.

18. In developing his argument that *Carlot* was wrongly decided, counsel for the appellant, Mr Dunning, argued that a convening of MPs at which no quorum was present prevents the sitting day from commencing. Applying the definition of "sitting" in the Standing Orders, he argued that the inquorate gathering could not be a sitting, because the lack of a quorum prevented the sitting from commencing.

19. Mr Dunning also referred to SO 50(2), which provides that if:

> *"If there is no ... quorum at the first sitting in any session Parliament must meet three (3) days later, and a simple majority of Members then constitutes a quorum."*

20. Article 21(4) of the Constitution is in similar form:

> *"Unless otherwise provided in the Constitution, the quorum shall be two-thirds of the Members of Parliament. If there is no such quorum at the first sitting in any session Parliament shall meet 3 days later, and a simple majority of Members shall then constitute a quorum."*

21. As this Court noted in *Carlot*, both of these provisions are notable for the fact that they refer to there being no quorum at a "sitting". In order to make sense of either provision on the appellant's case, it would be necessary to determine that "sitting" in SO 50(2) means "a gathering intended to be a sitting", while it has its defined meaning in the other provisions of the Standing Orders. We see no compelling reason to adopt that proposed interpretation.

22. Mr Dunning referred to a number of authorities on the conduct of meetings, but none related to Parliamentary sittings. He emphasised one of these authorities, *Myer Queenstown Garden Plaza Pty Ltd v Port Adelaide City Corp* (1975) 11 SASR 504.

23. In *Myer*, Wells J of the Supreme Court of South Australia emphasised the importance of the quorum requirements applying to the proceedings of a local authority. At 528, he referred to the strict construction of a quorum requirement as an imperative requirement. However, we do not see this as bearing directly on the issue before us, which is whether a sitting which turns out to be inquorate is still a sitting for the purposes of s 2(d).

24. Mr Dunning also referred us to the text, *Horsley's Meetings: Procedure, Law and Practice*. Paragraph 5.1 of the 7th edition of that work says:

"A quorum is the minimum number of persons who need to be present to constitute a valid formal meeting. Without a quorum, a meeting is not properly constituted and cannot transact business validly. Indeed, if there is no quorum present, there is no meeting in the legal sense. Without a quorum the meeting may not commence."

25. If this applied to sitting, it would obviously assist the appellant's case. But given the very different context, the fact that it is referring to meetings other than Parliamentary processes and the particular definition of "sitting" applicable to the Vanuatu Parliament, we do not derive much assistance from this text. Indeed, the text itself, at para 5.13, contrasts the quorum requirements relating to a meeting with the requirements of a parliamentary sitting, albeit in a slightly different context.

26. Mr Dunning also referred us to the relevant provision of the Standing Orders of the Legislative Assembly of the State of Victoria, Australia, which states:

> ***"28 Initial quorum***
> *The Speaker may only take the Chair and start a meeting of the House at the appointed time if a quorum of members is present. If there is still no quorum half an hour after that time, the Speaker must take the Chair and adjourn the House at once to the next sitting day."*

27. If that was the provision applying to the Vanuatu Parliament, the appellant's argument would be more compelling. But it is not. In fact, the contrast between the Victorian provision and SO 96 reinforces us in our interpretation of the latter.

28. For largely the same reasons as articulated by this Court in *Carlot*, we consider the better view is that an inquorate sitting is still, for the purposes of the Standing Orders and s 2(d), a sitting.

29. That means we agree with the primary Judge that the appellant was absent for the three sittings that occurred on 10, 16 and 17 August 2023.

Standing Order 96

30. Standing Order 96 provides:

> ***"Attendance of Members of Parliament***
> *96. (1) A member may be excused by the Speaker from attending a sitting of Parliament on the grounds of illness. The Member is required to present a medical certificate from a registered medical practitioner to the Clerk to justify his or her absence;*

(2) *Provided the Member has produced a medical certificate under paragraph (1), the Member is entitled to receive the sitting allowance for the days covered by the medical certificate;*

(3) *The Speaker may grant a Member permission to be absent from attending a sitting of Parliament on account of other family cause of a personal nature and the Member is entitled to receive the sitting allowance for such days determined by the Speaker;*

(4) *The Member's absence under this Standing Order is to be recorded in the Minutes of Proceedings as being absent with permission of the Speaker on account of illness or other family cause of a personal nature, which for the avoidance of doubt, such period of absence must not exceed a period of three (3) months;*

(5) *A Member who is absent without cause or prior permission of the Speaker must forfeit his or her entitlement to any of the allowances payable for such days of absence.*

31. Standing Order 96 came into effect on 20 June 2020. Thus, it was not in effect when earlier decisions of both this Court and the Supreme Court on the interpretation of s 2(d) were made.

32. The appellant argues that the requirement for permission in s 2(d) is regulated by SO 96, by the express operation of art 21(5) of the Constitution, which provides "Parliament shall make its own rules of procedure".

33. The appellant argues that an observation made by this Court in *Korman v Natapei* [2010] VUCA 14 at [28] supports this. What this Court said was:

> *"We accept that both the Standing Orders and the established "practice and procedure of parliament" may be seen as complementing the provisions of [s 2(d)] and, in limited circumstances, could assist in its interpretation, but, before such extraneous aid can be resorted to, there must be a clear lacuna or ambiguity in the Section and the interpretative aid must itself be clear and unambiguous in its meaning and ambit."*

34. If SO 96 said it was specifying a procedure by which MPs could ensure compliance with s 2(d), it may well complement s 2(d). But SO 96 appears to us to be aimed at dealing with issues of finance, namely the entitlements of MPs to allowances for days on which they are absent from sittings of Parliament. It applies to an absence for single sitting, which would have no consequences at all under s 2(d). And it applies to absences for two specified reasons (illness and family cause), whereas s 2(d) applies to absences for any reason. Section 2(d) would apply, for example, if a Minister was required to be out of the country representing Vanuatu for a period that coincided with Parliamentary sittings, but SO 96 would not.

35. The case for the appellant is that the advent of SO 96 has, in effect, transformed the requirement in s 2(d) to obtain permission from the Speaker to a "different process". The appellant's case is that, if an MP presents a medical certificate from a registered medical practitioner to the Clerk in accordance with SO 96(2), then the Speaker is automatically deemed to have provided permission for the MP to be absent from sittings of Parliament within a reasonable period of knowledge by the Speaker of the existence of the medical certificate. He said this could be inferred from the fact SO 96 requires the medical certificate to be provided to the Clerk, not the Speaker. This, he argued, showed the actual decision-maker in a case of a member seeking to be excused is the medical practitioner, not the Speaker.

36. The appellant cited in support of his proposition that the permission or excusing is deemed to happen the decision of the High Court of Australia in *Finance Facilities Pty Ltd v Commissioner of Taxation* (1971) 127 CLR 106. In that case, Windeyer J (with whom Barwick CJ and Owen J agreed) said at 134-135 that a reference in a statutory provision to "may" should sometimes be read as "shall" or "must". This applies in case where the provision confers a power on an office holder and prescribes the circumstances in which it should be exercised. If the prescribed circumstances arise, then the power must be exercised. Applying that proposition to SO 96(1) and (2) may support a submission that the Speaker must excuse the MP if he or she seeks to be excused and supports this with a valid medical certificate. That would be expected of an impartial officer such as a Speaker in any event. But that does not support the appellant's proposition that the excusing happens automatically, or is deemed to happen, without any step being taken by the Speaker.

37. We see the appellant's "deemed permission" or "deemed excusing" proposition as a misconstruction of s 2(d) and SO 96. Neither provision provides for the permission required under s 2(d) or the excusing required under SO 96(1) to be deemed to occur. In effect, the appellant's argument asks us to interpret s 2(d) as something like "if he is absent from three consecutive sittings of Parliament unless he has presented a medical certificate from a registered medical practitioner to the Clerk to justify his absence, and that certificate has been drawn to the attention of the Speaker". Reciting the appellant's case in those terms demonstrates how significantly it departs from the clear wording of s 2(d) itself.

38. We do not read the observation by this Court in *Korman v Natapei* as requiring resort to Standing Orders in the interpretation of a statutory provision in the circumstances of this case. As the Court observed in that case, Standing Orders *could* assist in interpretation, but only where a clear ambiguity or lacuna exists. None exists here.

39. Having said all that, we accept that, if the appellant had been excused by the Speaker under SO 96 from attending the sittings that occurred during his absence, that would likely have also amounted to the necessary permission for the purposes of s 2(d). However, this did not occur in the present case.

Did the appellant have permission to be absent?

40. The appellant's arguments on this issue were substantially based on the interpretation of s 2(d) discussed above, which we have now rejected. However, he argued that, even if we were to reject his arguments as to the construction of s 2(d) we should still find that the primary Judge was wrong to hold that the appellant did not have the permission of the Speaker to be absent from Parliament for the sittings that took place on 10, 16 and 17 August.

41. Before we address the detail of the appellant's submission, we clarify two legal issues raised in argument.

Declaratory function?

42. The first was a submission that the Speaker's announcement that the appellant had vacated his seat indicated that the Speaker considered he had a declaratory function in respect of the situation facing an MP who has been absent from three sittings of Parliament without permission. The appellant argued that s 2(d) does not confer on the Speaker any declaratory power: rather, if an MP has been absent from the relevant sittings without the necessary permission, then the consequence of the seat being vacated follows.

43. This issue was addressed recently by this Court in *Weibur v Republic of Vanuatu* [2021] VUCA 40. In that case, this Court said at [35] that, if the Speaker concludes an MP has been absent for three consecutive sittings, he should declare that to be his conclusion. The Court added that it was also appropriate for the Speaker to record that the MP who has been absent is, by the operation of s 2(d), required to vacate his seat. But in so doing, the Speaker is not bringing about the forced vacation of the MP's seat: that occurs by operation of s 2(d).

44. We agree that the Speaker does not have a power to make a legally binding declaration that an MP's seat has been vacated in accordance with s 2(d). But we do not think the Speaker was purporting to have such a function when he announced to Parliament that the appellant's seat had been vacated. Rather, he was simply informing MPs of what had occurred because of the operation of s 2(d). That was consistent with what this Court said was appropriate in *Weibur*.

Request required?

45. The second point is a criticism made by Mr Dunning on the appellant's behalf of the emphasis placed by the primary Judge on the need for the appellant to have requested permission from the Speaker. It is true that the primary Judge asked himself whether the appellant had requested the Speaker's permission. But there is nothing to indicate that he thought this was a statutory requirement. In fact,

he specifically noted at [32] that it was possible to obtain something without asking for it. But, as he then observed, something is more likely to be obtained if one asks for it. In *Korman v Natapei*, this Court endorsed an observation by the primary Judge in that case that "permission means a request from a Member and the response from the Speaker approving or rejecting the request of absence".

46. Like the primary Judge, we accept that it is possible that permission will be obtained without the MP asking for it, but in order to trigger a response from the Speaker, in most cases a request of some kind will be required. There is no prescribed form of request or even a requirement that it be in writing: *Korman v Natapei* at [38]. So the focus on the request is simply as part of the analysis to determine whether the permission required under s 2(d) has been obtained.

Letters to the Speaker

47. In the period that is relevant to our analysis, that is the period up to the third sitting from which the appellant was absent, 17 August 2023, the appellant wrote three letters addressed to the Speaker.

Letter dated 7 July 2023

48. The first of these was a letter dated 7 July 2023 but apparently not delivered to Parliament until 7 August 2023. This letter was headed "Re: Permission to be absent from the Extraordinary Seating (sic)". The text informed the Speaker and the Clerk of the fact that the appellant would be travelling to South Korea for medical treatment and would be still there until 20 August 2023. A medical report from a medical practitioner was said to be attached although there is some controversy as to whether it was in fact attached to the letter that was delivered to Parliament.

49. The letter was delivered to the receptionist at Parliament and stamped as received on 7 August, but the evidence of the Speaker was that it was not brought to his attention until 18 August 2023, that is after the appellant had already been absent from three sittings. The Speaker said he was unaware of the medical report until it was produced in evidence in the present proceedings, although, as noted, the letter of 7 July specifically referred to this report being attached. It should be noted that the medical certificate is a requirement of SO 96, not of s 2(d). On the face of it, the letter of 7 July, if it had been provided to the Speaker in time, could have been sufficient to alert the Speaker to the fact that the appellant was seeking permission to be absent, notwithstanding that the text of the letter (as opposed to the heading) did not specifically say so. But on the findings of the primary Judge, which we accept, the letter did not come to the attention of the Speaker until after 17 August 2023.

Letter dated 11 August 2023

50. The Speaker accepts that he received the letter dated 11 August 2023 on that day. The letter requested permission for the appellant to attend the sitting of Parliament on 16 August 2023 by

video-link. However, the first paragraph begins "I refer to the above and further to my request to you earlier for leave of absence (due to medical reasons)". The Speaker's evidence was that this led him to cause a search to be made for the earlier request, but this did not yield any result until after 17 August 2023, when the letter of 7 July 2023 was finally provided to him.

51. However, the letter did alert the Speaker to the fact that there had been a request for leave of absence due to medical reasons, and that could have triggered a communication to the appellant to obtain details. There is authority of this Court to the effect that the Speaker is not under any obligation to warn or give notice to an MP before his seat is vacated: *Korman v Natapei* at [14].

Letter dated 17 August 2023

52. This letter was received in the Clerk's office at 3 pm on 17 August 2023. That was after the sitting of Parliament had been adjourned that day, and thus the appellant's absence from three consecutive sittings had already occurred. However, the evidence of the appellant's political advisor was that he (the advisor) tried to deliver the letter to the Speaker in person on 17 August but was told to deliver it to the secretary of the Clerk.

53. The letter itself also did not, in the specific terms, request permission to be absent from one or more sittings of Parliament, but rather informed the Speaker of the appellant's extended medical treatment in South Korea.

Express permission not given

54. It was open to the Speaker to follow up these letters in order to establish whether the real intention of the correspondence was to seek permission for the purposes of s 2(d). As we have noted, this Court has ruled that the Speaker is under no obligation to do this, but that does not mean the Speaker cannot do it if he chooses to. In that regard, we think it is important to note that the office of the Speaker is an office applying to the whole of the Parliament, not to one faction within it. Under SO 10(1), the Speaker is responsible for maintaining order in Parliament. Under SO 10(3), the Speaker is required to ensure "that the standing orders, practices and procedures of Parliament are respected and observed by all Members". This simply reflects the long tradition applying to the office of Speaker of Parliaments around the world. It is an office that is impartial and it can be expected that the functions of that office will be undertaken reasonably.

55. All that said, we can see no error in the conclusion of the primary Judge that, notwithstanding the correspondence between the appellant and the Speaker, no permission was, in fact, granted by the Speaker so the appellant's absence from the sittings on 10, 16 and 17 August triggered the operation of s 2(d).

Implied permission?

56. The appellant argued that the lack of explicit permission did not necessarily mean that he did not have an effective permission arising by operation of the communications between him and the Speaker.

57. Reference was made to the decision of Lunabek CJ in *Natapei v Korman* [2010] VUSC 147, which was upheld by this Court in *Korman v Natapei*. In *Natapei v Korman*, the MP concerned was the Prime Minister and his absence was caused by an overseas trip in his capacity as Prime Minister. The Chief Justice noted that the Prime Minister had personally informed the Speaker of his absence from a session of Parliament because of his official overseas trip. The Speaker also inquired from the Prime Minister about the Prime Minister's absence. In addition, the Speaker acknowledged in Parliament that the Prime Minister was overseas and so some business before the House would await his return and acknowledged the presence of the Acting Prime Minister in Parliament. The Chief Justice considered that, in those unusual circumstances, the Speaker by his conduct had accepted the absence of the Prime Minister from the Extraordinary Session of Parliament and the Speaker's lack of objection equalled permission in the circumstances of that case.

58. Mr Dunning argued that a similar analysis was available in this case. He noted that the Speaker was aware of the appellant's absence in South Korea and said that the lack of objection on the Speaker's behalf amounted to consent. We disagree. Unlike *Natapei v Korman*, there were no conversations between the appellant and the Speaker and nothing from which it could be inferred that the Speaker was communicating to the appellant permission to be absent from the House.

59. The appellant also argued that, once the Speaker became aware of the appellant's absence in South Korea, he was obliged to give the permission required under s 2(d). In that respect he relied on the *Finance Facilities* case, to which we referred earlier. We do not accept that submission. Section 2(d) does not include the word "may". So there is no basis to apply the proposition, based on *Finance Facilities*, that "may" should be interpreted as "*must*". Rather, s 2(d) simply refers to the circumstances in which the absence from three sittings will be an event that leads to vacation of an MP's seat, namely not having obtained permission. We accept that once it is drawn to the Speaker's attention, either by the MP himself or by someone else, that the MP is seeking the necessary permission, the Speaker must act impartially and reasonably. But that does not impose on the Speaker an obligation to grant permission in circumstances where it has not been sought.

A respectful observation

60. Counsel for the Speaker, Mr Blake, informed us in the course of the hearing that there are 39 reported cases involving judicial review or constitutional challenges to the vacation of the seat of an MP under s 2(d). This seems to indicate that there is not a good understanding of the provision and the method

of ensuring it is not triggered when an MP needs for any reason to be absent from Parliament for an extended period. Where an MP has a valid reason for his or her absence, it is unfortunate if his or her seat is vacated merely because he or she did not follow the correct process to ensure that the necessary permission from the Speaker was obtained. It is of course a matter for the Speaker and for Parliament, but we raise for consideration whether a publication setting out the need for permission and how to obtain it would assist MPs; this could be drawn to the attention of new MPs during their induction. An alternative would be for Parliament to make a new Standing Order providing for the process by which the necessary permission could be obtained when an MP anticipates an extended absence or is already absent and realises a third sitting in his or her absence is about to occur.

Result

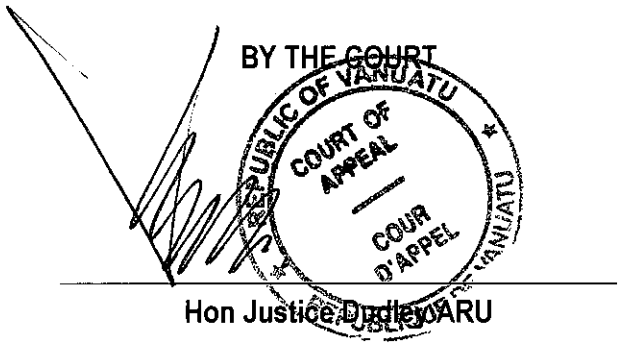
61. We conclude that the primary Judge was correct to find that the appellant had been absent from three sittings of Parliament without the permission of the Speaker and that s 2(d) therefore applied. We therefore dismiss the appeal. The stay granted by this Court on 6 October 2023 was granted until determination of this appeal and therefore now lapses in accordance with its terms. The consequence is that the appellant's seat is therefore now vacated in accordance with s.2(d).

Costs

62. The appellant must pay costs to the Speaker of VT200,000. We make no award of costs in favour of, or against, the second respondent.

DATED at Port Vila this 17th day of November 2023

BY THE COURT



Hon Justice Dudley ARU