

IN THE MATTER OF THE CONSTITUTION  
AND IN THE MATTER OF THE LOCAL  
GOVERNMENT COUNCILS ELECTION  
(AMENDMENT) REGULATIONS No. 23  
OF 1994

BETWEEN: DONALD KALPOKAS of Port Vila

First Petitioner

AND: BARAK SOPE of Port Vila

Second Petitioner

AND: VINCENT BOULEKONE of Port Vila

Third Petitioner

AND: THE GOVERNMENT OF THE  
REPUBLIC OF VANUATU represented  
by the Attorney General

First Respondent

AND: THE MINISTER OF HOME AFFAIRS  
Mr CHARLEY NAKO

Second Respondent

Mr John Malcolm for the Petitioners

The Honourable Mr Patrick Ellum, Attorney General, for the Respondents

This petition is presented on behalf of the Honourable Donald Kalpokas, Leader of the Opposition, the Honourable Barak Sope, Leader of the Melanesian Progressive Party, and the Honourable Vincent Boulekone, Leader of the Tan Union; under Section 218 of the Criminal Procedure Code Act, CAP 136. It is submitted by Mr Malcolm for the petitioners, inter alia, that the mode of election adopted under the Local Government Councils (Amendment) Regulations No. 23 of 1994, which provides for a mode of voting by means of a list system is:

- i) Unconstitutional, and
- ii) Unlawful.

Regarding his submission as to i) above, Mr Malcolm directed to the Court's attention Article 4(2) of the Constitution which says inter alia:

*"The franchise is universal, equal and secret"*

He submits that the meaning to be attached to the word "franchise" in Article 4, means "one man one vote." I would have thought that it is to the adjective "universal" which can be attached the meaning "one man one vote." Universal in that sense meaning: "everyone."

His second submission is based on the interpretation to be given to the word of section 6(1) of the Decentralisation and Local Government Regions Act No. 1 of 1994 (Decentralisation Act in short).

I cannot fail to note that the English version of this Act has been extremely badly translated. If one looks at section 6(1) in the French text one will see that the words "selon un mode de scrutin" have been left out of the English text. I propose therefore to rely on the French version of the Act in order to interpret this particular section, as I am entitled to do under section 17(2) of the Interpretation Act CAP 132, which reads as follows:

*"Where there is a difference between two or more versions of an enactment, preference in construing such enactment shall be given to the version which, according to the true spirit, intent and meaning of the enactment, best ensures the attainment of the objects."*

Section 17(1) of the same Act states as follows:

*"In construing an enactment, all versions in the official languages of Vanuatu shall be equally authentic."*

Looking therefore at the French version of the Act, section 6(1) reads as follows:

*"les membres du Conseil Provincial sont élus au suffrage universel direct selon un mode de scrutin faisant intervenir un element de representation proportionnelle."*

The relevant words for the purposes of Mr Malcolm's submission are "*sont élus au suffrage universel direct.*" Translated into English it means that the members will be elected by means of "direct universal franchise." "Direct" and "universal" are adjectives qualifying the noun "franchise." Mr Malcolm interprets those words as meaning "one man one vote for one man." He does not refer the Court to any authority for this proposition. He merely states blandly that that is the correct interpretation to be given to the words "*sont élus au suffrage universel direct.*"

"Suffrage" in French or "franchise" in English, is a noun that has come to mean the right of voting at public election. It certainly does not mean as contended "one man one vote." The word "universal" is an adjective that means proceeding from the whole body or number without exception. In other words it means that everyone is entitled

to cast a vote. Under the Constitution it is limited to all citizens over the age of 18. In other words every man has a vote. It certainly does not mean one man one vote for one man, as submitted by Mr Malcolm. "Direct" here is an adjective that has the same meaning in French or in English, namely straight; undeviating in course. It means that it is by a vote cast directly by the electorate that the representatives are elected, as opposed to indirectly through a system of electoral college as is the case for the election of the President of the Republic or the Prime Minister. The word "direct" certainly does not mean one man one vote for one man. It can only mean the process whereby the representative is elected through the direct casting of a vote by universal suffrage. It is to the meaning of the words "suffrage universal direct" that interpretation must be given in this context, and not to the words individually and disjointedly. This is what in the words of section 17(2) of the Interpretation Act "which, according to the true spirit, intent and meaning of the enactment, best ensures the attainment of its objects."

The Decentralisation Act changes the "mode de scrutin" in other words, the "electoral system" from one which is a "uninominal list" system, to one which is a "multinominal list" system, but it neither alters the direct electoral mode of voting, any more than it takes away any Constitutional rights. The only Constitutional right under Article 4(2) is that the franchise should be "universal, equal and secret." The multinominal list system is as universal, equal and secret as the uninominal list system. There is no requirement under the Constitution that the mode of franchise must be by way of a uninominal list system any more than it must be by a multinominal list system. If one looks at Article 17(1) of the Constitution it says:

*"Parliament shall consist of members elected on the basis of universal franchise through an electoral system which includes an element of proportional representation so as to ensure fair representation of different political groups and opinions"*

What the Constitution does not require is that Parliament shall be elected by means of "suffrage universal direct" or "direct universal suffrage." Therefore there would be nothing unconstitutional were Parliament to be elected through the means of an electoral college. Whichever mode is preferred, direct or indirect, neither is unconstitutional.

The third submission made by Mr Malcolm, is that the new regulation is unfair, because it prevents an individual from standing alone if he wishes to or of voting only for one man if he wishes to. The answer to that submission is simple, there is no such right preserved in the Constitution or under any law. The Decentralisation Act foresees that individuals can group together in presenting an apolitical list if they desire. There is no Constitutional guarantee that entitles a citizen of Vanuatu the right to present himself alone at an election or that entitles him to vote for a uninominal list, therefore no Constitutional right is breached.

The franchise must be "universal, equal and secret," that is all. The proposed electoral system is universal, equal and secret. What is more it is direct, which is neither requires nor proscribed by the Constitution. Every individual or electoral party is equally afforded the same right without discrimination, that is, of presenting a list of

candidate of his choice. In the absence of a Constitutional obligation to present a uninominal list or of a law stating that a uninominal list system is to be preferred, there cannot be a breach of any Constitutional or legal right.

For the reasons that I have given, I am satisfied under section 218(5) of the Criminal Procedure Code Act, CAP 136, in the first instance, that this petition is without foundation.

It is therefore ordered as follows; that this petition be dismissed pursuant to section 218(4) of the Criminal Procedure Code Act, CAP 136.

This petition being neither vexatious nor frivolous, and being satisfied that it was made in the interest of the public, I entirely approve of the learned Attorney General's view that he should not in those circumstances seek an order as to cost. I therefore make no order as to cost.

Made this 7<sup>th</sup> day of October 1994.

*Charles Vaudein d'Imecourt*  
CHARLES VAUDIN d'IMECOURT  
Chief Justice

