

**IN THE SUPREME COURT OF**  
**REPUBLIC OF VANUATU**  
**(Civil Jurisdiction)**

**Civil Case No.65 of 1997**

IN THE MATTER OF THE CONSTITUTION OF  
THE REPUBLIC OF VANUATU (The  
Constitution)

AND: IN THE MATTER OF THE NATIONAL  
COUNCIL OF CHIEFS (Organization)  
ACT [CAP 183] (The Act)

AND: IN THE MATTER OF THE NATIONAL  
COUNCIL OF CHIEFS (Election Procedure)  
(Rules) ORDER No. 8 of 1989 (The Order)

**BETWEEN: CHIEF WARE ADAM**  
**Petitioner**

**AND: THE ELECTORAL COMMISSION**  
**First Respondent**

**AND: THE PRINCIPAL ELECTORAL OFFICER**  
**Second Respondent**

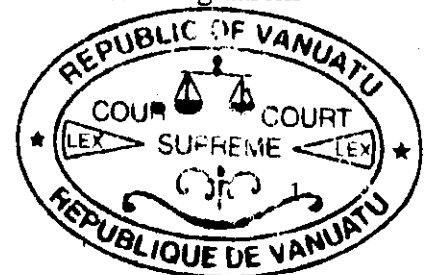
**Coram:** Mr Justice Oliver A. Saksak  
Mrs M Sese – Clerk of Court

**Counsel:** Mr John W. Timakata for the Petitioner  
Mr George F. Boar for the First and Second Respondents

**JAJMAN LONG TOKTOK**

Petitioner blong kes ia Jif Ware Adam hemi askem kot blong makem olgeta Deklaresen  
ia:-

- (1) Se Eleksen we seksen blong Electoral Kolej blong Pentecost Region i holem long  
No.14 Mai 1997 hemi no stret, inogud mo i nogat effect blong hem.
- (2) Se eleksen blong Jif Adam Bule mo Jif Paul Bule hemi no stret, i nogud mo  
inogat effect blong hem.
- (3) Blong Kot i givim Oda blong holem niu eleksen folem loa.
- (4) Blong Kot i givim Oda blong olgeta Respondens oli pem evri costs blong harem  
Petition ia.



(5) Blong Kot i givim narafala Oda we hemi luk i stret blong givim.

### 1. RAET BLONG JIF WARE ADAM BLONG PUTUM KES

Fas poen we Kot hemi lukluk long hem hemi weta Jif Ware i gat raet blong putum kes long Kot?

Kot hemi luk i klia se Jif Ware i gat raet blong kam long Kot wetem Petition ia. Hemi klia se Jif Ware hemi bin stap long Elektoral Kolej mo hemi bin vote blong jusum tufala memba blong kam insaed long hae ofis blong olgeta Jifs, Malvatumauri.

Hemi luk olsem poen ia ino stap long dispute so mi satisfae se Jif Ware Adam hemi wan elector mo hemi gat raet blong putum Petition ia long Kot ia.

### 2. FASIN BLONG PRUVUM KES LONG KOT

Hemia i wan Civil Kes mo fasin blong pruvum kes hemi blong Jif Ware hemi soemaot nomo long Kot se hemi posibol se Elektoral Kolej blong Pentecost Region ino gat ol raet jif i stap long hem blong holem eleksen long No.14 Mai 1997. O se hemi posibol nomo se Elektroal Komisen mo Elektoral Ofis ino bin mekem gud wok blong olgeta long eleksen blong No.14 Mai 1997. Hemi difren long Criminal kes we prosekusen imas pruvum kes i klia we i nogat questen se wanman i mekem rong we oli putum agensem hem.

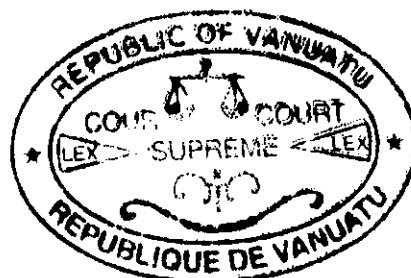
So blong Petitioner i pruvum kes blong hem hemi mas singaot ol witnes. Hemi singaotem six witnes blong hem mo olgeta Respondents I gat six witnes blong olgeta.

### 3. OL POEN BLONG KOT HEMI LUKLUK MO DISAED

Long olgeta toktok we I foldaon long Kot ia, hemi luk olsem igat tufala grup istap raorao from olgeta posisen long Bilmalvanua Kaonsel blong Jifs, Biltakan Area Kaonsel blong Jifs mo Malbangbang Area Kaonsel blong Jifs. Kot ia hemi no save lukluk mo disaed se weswan long tufala grup blong Jifs nao oli ol raet grup. Kot ia hemi lukluk mo disaed weta Elektoral Kolej blong Pentecost Region we i holem eleksen long No.14 Mai 1997 igat ol raet mo stret jif istap insaed olsem ol elektor. Mo tu Kot I lukluk mo disaed whoia hemi gat duti blong mekem sua se ol raet jif imas stap insaed long Elektoral Kolej ia.

Loya blong tufala Respondens italemaot strong se Kot hemi sut sakemaot petition from se hemi olsem wan "funny or mockery" blong system. Should Kot ia hemi sakemaot petition ia folem rison ia? Ansa hemi no. Kwesten nao hemi from wanem Jif Ware after we hemi vote olsem wan elektor finis, after hemi girap bakegen mo i talem se eleksen ino gud from we hemi mekem we ino folem stret tingting blong hem? Long samfala pipol samting ia hemi olsem wan fan nomo be sapos yumi lukluk gud yumi askem kwesten long narasaed se from wanem Jif Ware hemi putum petition?

Hemia long Kot ia i soemaot wan samting ino stret. From rison ia kot ino akseptem toktok ia se Petition hemi 'vexatious or frivolous'.



So from wanem nao Jif Ware I gohed blong putum kes long Kot nating we hemi bin vote? Bambae yumi lukluk long samfala toktok blong olgeta witnes blong faenemaot rison:-

A. Jif Vidal Bulesanibo Mariak

Loya John Timakata i askem wan kwesten olsem-

“Jifs Raymond mo Adam Bule igat raet bong stap insaed long Elektoral Kolej?”

Ansa- “Nogat. Raymond Tabisalsal hemi wan man blong politik. Mo Adam Bule hemi political Komisa blong NUP long Central Pentecost. Hemia nao rison mifala ino agri.”

Long narasaed Loya George Boar i askem Jif Mariak olsem-

“Long past, wanem i stap happen?”

Ansa- “Ol jif we imas save gud kastom blong hem mo mas save lelbet long kastom blong narafala area. Hemi no mas be wan political party.”

Bakegen Loya i askem “ sapos mi wan hae jif mo wan politician, mi save go long Malfatumauro?”

Ansa- “Nogat”.

B. JIF LUKE BULEKOLO VIRALOLOE

Kwesten we loya George Boar i askem long Jif Viraloloe hemi olsem-

“ Hamas long yufala istap insaed?”

Ansa- “Mifala istap aotsaed nomo. Ol man blong politic nomo.”

Kwesten- “Hao yu save se ol jif blong Saot Pentecost ino gud?”

Ansa- “William Tarere hemi NUP Adam, NUP. Hemia ol man blong pati.”

Kwesten- “Wan jif i kilim pig mo i ple politic ino wan tru jif?”

Ansa- “Jif ino save go long jioj or gavman.

Oli no save mixim wok olbaot.”

C. JIF VIRANI ADAM BULE

Kot i askem sam kwesten long jif Virani olem:-

“Yu memba blong Bilmalvanua Kaonsel blong Jifs?”

Ansa: “Mi bin memba since Bilmalvanua Kaonsel blong Jifs i fom kasem 1986.”

Kwesten- “Long save blong yu, Executif i gat raet blong givim nem igo long Lokol Gavman memba blong Elektoral Kolej?”

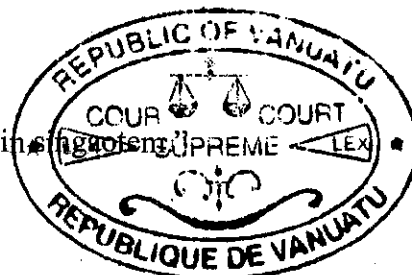
Ansa- “Yes. Memba blong Malfatumauro imas kamtru long Area Kaonsel mo gotru long Bilmalvanua blong contestem eleksen.”

D. JIF PAUL BULE

Loya George Boar i askem kwesten:

“Malbangbang miting, whoia i singaotem?”

Ansa- “Jean Harry Raphael mo mi olsem Jeaman i bin singaotem.”



E. JIF HARRY RAPHAEL

Kwesten i kam long Mr Timakata olsem:-

“Yu stap long aelan long taem ia?”

Ansa- “Mi stap tru long Paul; mi stap long Vila.”

Kwesten- “Paul Bule i singaotem miting?”

Ansa- “Yes mi givim raet long hem long singaotem miting.”

4. OLGETA LOA

(a) Constitution Artikel 29(1) hemi talem-

“The National Council of Chiefs shall be composed of custom chiefs elected by their peers sitting in District Councils of Chiefs.” (emphasis, mine)

(b) National Council of chiefs (Organization) Act [CAP 183] section 2 reads-

(1) The council shall comprise 22 chiefs.

(2) Each regional council of chiefs shall elect one or more custom chief(s) from the regional council to sit in the council until the next election as follows-

(c) Pentecost region – 2 custom chiefs.  
(emphasis, mine).

(c) Malvatumauri Standing Order dated 29<sup>th</sup> September 1988.  
Order 1 reads:

“Chief we i kam memba blong Malvatumauri i mas be tru kastom chief.”

Order 2 reads-

“Chief we ikam long National kaonsel of chiefs imas gat 35 years up to 50 years. Mo i mas mekem wok blong chief 12 years ago antap, be I gud moa sapos is wok 20 years.”

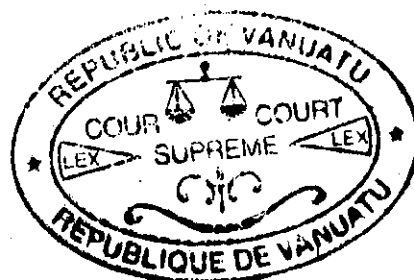
Order 6 reads-

“Chief we i winim vote imas gat respect mo i mas gat plante save long Kastom long eria blong hem.

Order 7 reads-

“Chief ia i mas fri long eni influence long eni Political Parti.”

Order 8 reads-



“Chief ia i mas register hem olsem kastom chief.”

Order 9 reads-

“Chief ia i mas be tru blat blong Paramount Chief.”

(All emphasis are mine)

(d) Rul mo Oda blong Bilmalvanua dated 12<sup>th</sup> Disemba 1983.

Rule 14.12 reads-

“Ol Jif we oli member blong Bilmalvanua oli mas save KASTOM blong olgeta.”

Rule 14.13 reads-

“Jif we i memba blong Bilmalvanua bambae ino joen long eni Politikol Grup.”

Rule 14.14 reads-

“Jif we i memba blong Bilmalvanua hem i stret jif we I respektem wetem ol jif mo pipol.”

Rule 16(1) reads-

“Namba blong ol Area Kaonsel blong ol Kastom jif long Pentikos i save kasem 3 nomo.”

Rule 16(2) reads-

“Namba ia i folem nomo kastom mo kalja wetem ol praktis we i seraotem Pentikos long 3 pat.”

Rule 18 reads-

“Jif we hemi memba blong Bilmalvanua Kaonsel hem nao i gat raet blong holem, wok blong President blong Area Kaonsel. Hemia blong mekem coperesen mo andastanding blong wok i stap wan oltaem.”

Rule 19 reads-

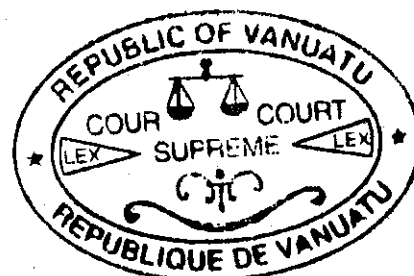
“(1) Ol area kaonsel igat raet blong lukaot gut ol kastom, kalja mo tradisen long area blong olgeta.

(2) Area Kaonsel igat raet blong mekem rod blong ol pipol i save stret kastom wetem kalja mo tradisen long area blong olgeta mo blong oli respektem.”

Rul mo Oda No.2 blong Bilmalvanua date 15 August 1984, Rule 1 reads:-

“Jif we oli memba blong Bilmalvanua olgeta i gat raet blong Malvatumauri.”

Rule 2 reads:-



“Supos Lo blong Eleksen blong malvatumauri ino jenis, bambai Bilmalvanua nomo i save sendem ol memba blong hem blong oli go joen wetem ol narafala jif blong C.D.2 long Eleksen dei blong jusum jif blong olgeta i kam memba blong Malvatumauri.”

Rule 3 reads-

“Bambai wanwan jif ino gat raet blong kivim nem blong hem wan igo long ELECTORAL OFIS.”

Rule 4 reads:-

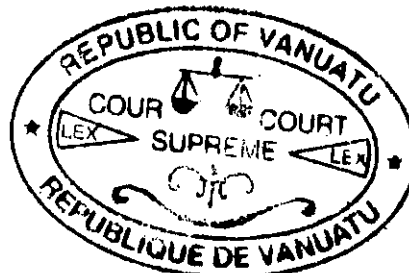
“Ol trifala eria kaonsel blong ol jif oli gat raet blong apruvum jif we bambai hem i kam memba blong Malvatumauri se hem wan I mas save ol stret kastom long area blong hem, mo hemi mas save lelbet kastom blong narafala eria.”

(All emphasis are mine).

## 5. WANEM NAO KOT I FAENEM

Folem olgeta toktok blong olgeta witnes blong kes we kot i skelem wetem olgeta loa antap, kot i faenem se:-

- (1) Pentikos region igat 3 pat. Central pat i stat long Namaram mo ifinis long Hot Wota. Paul Bule hemi blong Lonorore wei stap insaed long Central area we Area Kaonsel blong hemi Biltakan. Hemi klia tumas se Jif Paul hemi go insaed long Malbangbang Area kaonsel mo ol jif oli jusum hem blong kam memba blong Elektorol Kolej mo hemia I agensem Rul mo Oda blong Bilmalvanua.
- (2) Jif Paul Bule hemi no talemaot tru toktok long Kot ia taem hemi no talemaot se long taem blong miting blong Malbangbang long Wali vilij Jif Harry Raphael ino stap be hemi stap long Vila. Jif Paul hemi no talem trutoktok taem hemi talemaot long Kot se Jif Harry Raphael mo hem nao i singaot miting blong Malbangbang.
- (3) Jif Virani Adam Bule mo Jif Paul Bule tufala ino hae jif. Folem Standing Order blong Malvatumauri tufala inosave stap long Elektoral Kolej mo tufala ino save kam memba blong Malvatumauri.  
Kot ia hemi mekem desisen blong hem long poen blong hae jif o paramount jif finis long Civil Case No.74 blong 1997 long pej 5 paragraf 4 mo 5 long jajmen.
- (4) Artikel 29(1) blong Constitution wetem Loa long olgeta Jif [CAP 183] mo Standing Order blong Malvatumauri mo ol Rul mo Oda blong Bilmalvanua Island Kaonsel blong Jifs oli mekem iklia tumas se ol jif we oli jusum olgeta blong kam memba blong Elektorol Kolej oli mas be kastom jif. Jif Virani mo Raymond Tabisalsal ol toktok blong tufala witnes blong Jif Ware Adam i soemaot klia se tufala i memba blong politikol parti. Folem ol Law mo Order mo Rul ia, tufala ino



save qualifae blong go insaed wan Elektorol Kolej blong vote or kam memba blong Malvatumauri.

Ino bin gat eni toktok long saed blong Jif Virani o eni witness blong hem se toktok ia ino tru.

6. **WHOIA IGAT DUTI BLONG MEKEM SUA SE OLGETA MEMBA BLONG ELECTOROL KOLEJ OLI TRU KASTOM JIF WE OLI NO TEK PAT LONG POLITIK?**

Kot ia hemi satisfae se Elektorol Komisen mo Elektorol Ofis igat duti ia. Artikel 20(1) blong Constitution is putum duti ia iklia istap. Hemi no enaf blong talem se from se jeaman blong Elektorol Komisen mo Principal Elektorol Ofisa tufala i blong Pentikos so tufala isave whoia ol jif we oli stap long Elektorol Kolej. Yumi no save wok long presumption. Tufala Ofis ia igat duti blong mekem gud wok blong jekemaot gud fastaem wetem Malvatumauri Ofis or Bilmalvanua weta olgeta i agree long olgeta nems blong ol six fala jifs we oli stap long Elektorol Kolej. Taem Elektorol Komisen mo Elektorol Ofis ino mekem gud duti ia, then yumi gat komplem mo kes ia i kam antap.

Folem olgeta rison ia, kot i givim jajmen i go long feva blong Petitioner, Jif Ware Adam.

7. **DEKLERESEN MO ODA BLONG KOT**

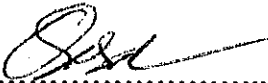
Kot i mekem olgeta Dekleresen mo Oda ia:-

- (1) Se Eleksen we Elektorol Kolej blong Pentikos Region i bin holem long No.14 mai 1997 hemi no stret, ino gud mo hemi no gat fos or effect blong hem.
- (2) Se Eleksen blong Jif Adam Bule mo Jif Paul Bule ino stret, i nogud mo hemi no gat fos o effect blong hem.
- (3) Se Elektorol Komisen mo Elektorol Ofis imas holem niu eleksen blong Pentikos Region folem loa.
- (4) Se costs blong Petition ia evriwan bambae First mo Second Respondens i pem igo long Petitioner. Sapos ino gat agrimen long costs ia bambae Kot i save mekem taxation long hem.

**DATED LONG PORT-VILA long 21 DEI BLONG MAI, 1999**

**SEALED: 25<sup>th</sup> May, 1999**

**BY THE COURT**

  
.....  
**OLIVER A. SAKSAK**  
Judge

