

IN THE MATTER OF: ELECTION OF MEMBERS OF
PARLIAMENT OF THE REPUBLIC OF VANUATU

AND IN THE MATTER OF: THE REPRESENTATION OF THE
PEOPLES ACT [CAP.146]

BETWEEN: SHEM RARUA
 Petitioner

AND: THE ELECTORAL COMMISSION
 Respondent

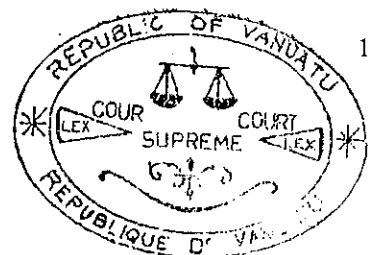
Coram: Mr Justice Oliver A. SAKSAK.

Counsel: Mr Robert Sugden for the Petitioner
 Mr Bill Bani Tangwata and Mr George Boar for the Respondent

JUDGMENT

The Petitioner petitions this Court pursuant to Sections 54,55,56,57,58 and 59 of the Representation of the People Act [CAP 146] (the Act) by petition signed in his own and sole name dated 24th March 1998. He seeks the following declarations:-

- " 1. That the election in the Port Vila constituency is invalid and therefore null and void.
2. That there be a fresh re-election in the Port Vila Constituency.
3. That the Respondent is incompetent.
4. Such further declaration and/or orders as the Court shall deem fit."



The Petitioner's case is basically that there were so many breaches of the relevant laws and procedures that the Respondent must be held to have failed in its duty under Article 20 of the Constitution and the whole election declared void.

The Grounds

The Petitioner alleges that there has been substantial non-compliance with the relevant laws, rules, orders and regulations in the conduct of the elections in particular that the Respondent had acted in contravention of the law –

- “ (i) in purporting to permit persons who are not registered in one particular polling station to cast their vote., and
- (ii) by failing to disregard the votes that did not tally with the electoral roll list.”

Facts

The Petitioner of Ni-Vanuatu origin was himself a candidate for elections in the Port Vila Constituency on 6th March 1998. He represented a political grouping known as Saravaua. He being a registered voter voted at Pakarua Polling Station. He won 270 votes.

There were 29 candidates in all for the Port Vila Constituency. There were 18, 663 registered voters of whom 6,500 voted representing a 35% turn out. There were 70 void votes leaving a balance of 6 430 votes.

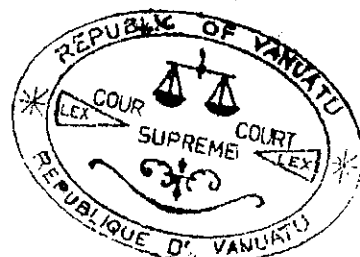
The 29 Candidates contested for 6 seats for the Port Vila Constituency in the National Parliament. On 6th March 1998 the Respondent declared the following candidates as duly elected for the Port Vila Constituency-

(1)	Nipake Edward Natapei	-	880 Votes
(2)	Willie Jimmy	-	545 Votes
(3)	Wilson Ray Aru	-	535 Votes
(4)	Maxime Carlot Korman	-	515 Votes
(5)	Clement Leo	-	383 Votes
(6)	Henri Taga Tari Karea	-	352 Votes

Issues

The issues for the Court to decide are:-

- (a) Whether or not the Respondent in purporting to permit persons who are not registered in one particular polling station to cast their vote had acted in breach of relevant laws, rules, orders and regulations?



- (b) Whether or not the Respondent failed to disregard the votes that did not tally with the electoral list? And if so, did the Respondent act in breach of relevant laws, rules, orders and regulations?

Evidence

(A) For the Petitioner

20 witnesses, including the Petitioner himself, gave evidence. I summarize each witness' evidence in chief as follows:-

1. Shem Rarua, the Petitioner

He was a candidate for the Port Vila Constituency during elections held on 6th March 1998. He voted at Pakaroa Polling Station. Of all the ballot papers given to him there was none for Captain Claes. Mr Charles Bice, Chairman of the Electoral Commission the Respondent herein came to his house and had discussions indicating that elections were a complete mess and that fresh elections should be held. He inspected the books and electoral rolls used in the 1998 elections for the Port Vila Constituency and tendered 6 boxes of documents forwarded by the Respondent pursuant to a Court Order as Exhibit P2. He made the following observations in relation to the 9 Polling Stations:-

(i) Vila North

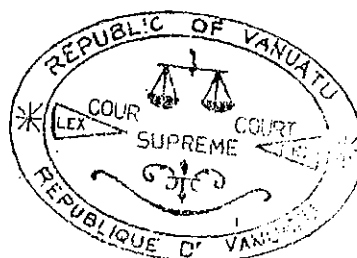
That only one electoral roll was used for recording voters. He found 304 names were crossed off the roll meaning that 304 people had voted. He found 380 votes when he counted up ballot papers. He found 3 void votes and 79 more votes cast than names crossed off.

(ii) Pakaroa Church

He found that only one electoral roll was used. That 134 names were crossed off the roll meaning that 134 people voted. He counted 134 votes. There were no void votes. He found that a voter by name of Trevor Rarua was crossed off here and also at Namburu.

(iii) Cultural Centre

From the original documents forwarded, the witness found 2 false duplicate cards including one for Sam Mahit dated 13th February 1998. Three electoral rolls were used, 2 of which were the same and one was different. The Report produced in relation to this Polling Station indicated that 4 electoral cards were not on the roll. Further that a man produced 2 proxies that were not in the roll. The numbering of some cards was not correct. That 567 names were crossed off the roll



meaning that 567 people voted. That 610 votes were counted with 5 void votes. That there were 48 more votes cast than names crossed off.

Further documents produced by the Respondent revealed a supplementary roll indicating a further 31 voters who names were crossed off that roll bringing the total number of names crossed off to 598. With that, there were 17 more votes cast than people who voted.

(iv) **Municipal Stadium**

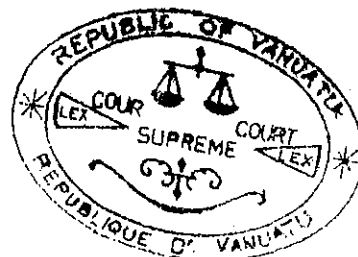
He observed that only one electoral roll was used to cross off names of voters. 163 names were crossed off. 164 voters were counted. There were 2 invalid votes. There were 3 more votes cast than names crossed off.

(iv) **Namburu**

He saw 18 books but observed that only 3 books were used as they correspond to the number of voting rooms used there. He found that Trevor Rarua who had been crossed off at Pakarua Church was also crossed off here. That 25 names were handwritten into Books 2 and 3. 14 of those names were typed in Book1 but not into Book 2 and Book 3 and 11 names were not typed in any book. That 811 names were crossed off including the handwritten ones meaning that 811 people voted here. That 1,356 votes were counted of which 27 were void votes. That there were 571 more votes cast than names crossed off.

(v) **Colardeau School**

The documents originally forwarded revealed that only 2 electoral rolls were used for crossing off names of voters. That 285 names were crossed off both rolls. That the total valid votes was recorded at 924 and wrongly totalled in that Wilson Aru's vote of 102 was counted twice and Salong Stephen's 4 votes were not counted at all. The actual number of votes counted was 916 with 5 invalid votes. That the number of names crossed off the 2 electoral rolls was 1,133 meaning that 212 votes cast were not counted. Further documents forwarded by the Respondent revealed that 3 electoral rolls were used to cross off names of voters. 285 names were crossed off in 2 electoral rolls. The total number of votes counted was 916 and 5 invalid votes. The number of names crossed off the rolls was now 1,528 meaning that 1,528 people voted. That there were 607 votes cast by voters which were not counted.



(vii) **Public Works**

That addition of names crossed off here was 938. The names crossed off was in fact 930. There were 9 invalid votes. The number of ballot papers counted was equal to the number of votes crossed off the electoral rolls. There were 3 electoral rolls used for crossing off names.

(viii) **Ex-FOL**

3 electoral rolls were used. 2 books had 138 sheets and more names than the third with only 134 sheets. The number of names crossed off was 846 although it was recorded as 844. The number of valid votes counted was 893. There were 9 invalid votes and 56 more votes cast than names crossed off. A further roll forwarded revealed that 899 people had voted as their names were crossed off. There were 9 invalid votes. 893 votes were counted. There were 3 more votes cast than people who voted.

(ix) **Agriculture**

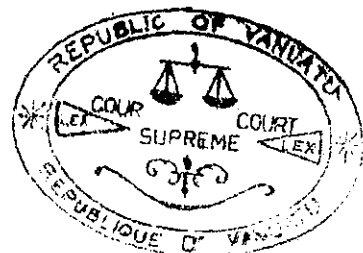
There were 5 separate books used for crossing off names. The number of names crossed off in the 5 books totalled 1,228 meaning that number of people voted. There were 11 invalid votes. 1,694 votes were counted. There were 477 more votes cast than people who voted.

Finally the Petitioner observed that the Gazetted result of the elections in Port Vila is wrong in calculation in that the number of valid votes cast was 7, 068 and not 7,022 as published. That the number of invalid votes was 71 and not 70. That the number of registered votes who voted was 6,595 and not 6,500 as published. The Gazette was tendered as Exhibit P1.

The Petitioner's witness statement was tendered as Exhibit P3.

2. **Kalo Sande**

He testified that he stood as an observer at the Agriculture School Polling Station on 6th March 1998. He saw Peter Reuben come in and tried to vote on Charley Tina's card. Peter Reuben had come in with one other boy who had gone in a red truck belonging to Eddie Silas. There two boys came in first and on seeing them the witness alerted the police to watch very carefully. On entering the polling station one of the boys became frightened and went out without voting. Peter Reuben passed the first polling clerk but at the second clerk he was asked about his name. When matched with the name in the card it was totally different. Peter Reuben ran away into the red truck and left without voting. Later he said that he was warned by police not to interfere with polling. He said that in the 1995 elections the same practice had been taken. He made reference to some cards kept by Pakoa Miale which were used during 1995 elections. Further he



testified about how he and his wife went to the Electoral Office to check his name on the roll on the last day before closing date. He was told by Tom Alick that the office was closed therefore he should return at 1: 30 pm. He saw some men with Tom Alick through the window with many cards on the table and the electoral roll books opened before them. He testified about Willie Kaloris and Pakoa distributing cards with other boys in 1995, and how they were instructed to wait until the afternoon when the polling officers were tired then they could go in and vote. He testified that in 1995 there were two rooms. He told the Court that they understood in 1995 that they were breaching the law when they did all these things.

3. **Pakoa Miale**

He testified that he was an observer at the Agriculture School where he also voted. He saw his nephew come in to vote on Kakae Willie's card. This boy was only 16 years old. Kakae Willie was registered to vote on Tongoa and his real name is Kakae Noel. As regards the 1995 elections the witness said he was given a number of cards by Willie Kaloris who told him to distribute the cards to any others who did not have cards but did not use them as he did not want to jeopardize his candidate. The 14 cards were tendered as Exhibit P4.

4. **Willie Jacob**

He was an observer at the Agriculture School Polling Station. He testified that he saw his nephew Harry William come in to cast his vote on Kakae Robert's card. This boy is only 16 years old. Kakae Robert lives on Tongoa.

5. **Alice Tavunwo**

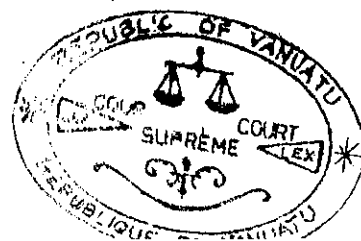
She testified that on 6th March 1998 a man by name of Meltetake went to her house and gave her a card to vote with. She said she told Meltetake that she had her own card but it was not with her at the time. She was assured that it would be okay for her to vote with the card she was given which belongs to Alice Meltetake and to vote for a specific politician. And she voted at Namburu Polling Station.

6. **Serah Cakau**

She went to vote at Colardeau School on 6th March 1998. As her candidate's photo was not on the table, she dropped in an empty envelope.

7. **Jean Maltaus**

He was picked up by two men in a G- Plated vehicle on 6th March 1998 at his home at Tagabe to go and vote at Namburu Polling Station. He voted for the first time in his life. His card was with his father on Malekula who was to vote in proxy for him. But these two men gave him a card and told him that he was registered to vote in Port Vila. He was given the card at about 3:00pm and he went to vote. He said his name was on the card



which he was given. Someone else had gone in with his card to vote but the card was withheld when the identity of the holder was not in fact Jean Maltaus. He said the card was used during Municipal elections in 1997. He denied that he had used the card at the time.

8. Ava Omawa

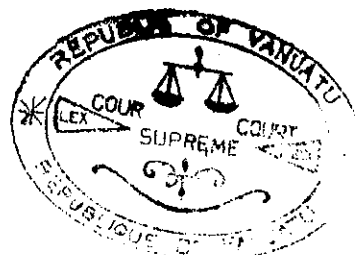
She was Polling Clerk No.1 at Namburu School. She testified about the instructions they had received from Tom Alick that if a person came with a card but did not have their names on the roll, they should not be allowed to vote or vice versa. She told the court that many people came in this category and she told them that they could not vote. But the Presiding Officer by name of Iatika told her to refer such people to him and she did. After Iatika had seen them he told the witness to write in their names and let them vote and she did. She wrote the names in the available spaces in the rolls. Her job was to check out the names and numbers of each person and cross them off. Where there were no names she would write in the names and numbers. There were many observers there with 6 Polling Officials in all. After voting had closed they were told by Iatika to count up the votes and tally them with the names crossed in the books. She told the court that the number of votes counted was in excess of the number of names crossed off. She said the Presiding Officer had assured them that it was all okay. She said the Presiding Officer did not make a report. She told of an old Tannese man with scabies whom she recognized who came to vote in the morning and then returned to cast a second vote in the afternoon.

9. John George

He testified that he voted by proxy two times on 6th March, 1999 but that he also voted three times elsewhere. At Colardeau School he voted proxy in the name of Alick Kaloris. This man is already dead. That was in the morning. He voted with his card first then by proxy. Later he went to Ex-FOL and voted before he went to have lunch. After lunch he went to Namburu School and voted there and lastly he went to Agriculture School to vote. He did not know the names of the people in the cards he voted with. He just used them. He said at Colardeau he did not receive an indelible mark but he received one at Ex-FOL and he went to erase it before going to vote at Namburu. He also erased the mark he received at Namburu to enable him to vote Agriculture School.

10. Sam Mahit

He was a candidate for the 1998 elections for the Port Vila Constituency. He testified about how he went to the Electoral Office and requested Tom Alick about cards for new registration. Tom Alick told him that he had to pay for the cards and that Tom Alick had done the same for other candidates as well. He said that 270 cards were available for VT20 000. He said that he paid VT20 000 and was told to return in the afternoon. He was issued a receipt tendered as Exhibit P5. In the afternoon when the witness returned, the cards were not available. He returned the next day but was told that someone had already



taken the cards. He demanded his money back but has been told that the money is now in the treasury.

11. **Mary Seule**

She went to vote at Colardeau School on 6th March 1998. She was given photos of candidates but there was none for her candidate which was Mr. Rarua. She therefore put in an empty envelope.

12. **Annie Ruth Pakoa**

She testified that on the evening of 3rd March 1998 she met William Harry when she was returning home after prayer. She said Harry William gave her a card and told her it was her mum's card. At home she opened the card and saw that the details in it about her mother were not correct. The witness said she is 25 years old and the card stated that her mother was also 25 years old. She said the card indicates her mother as a gardener but in fact her mother works at Le Meridian. She identified the card which is Exhibit P6.

13. **Jean Patrick Maltock**

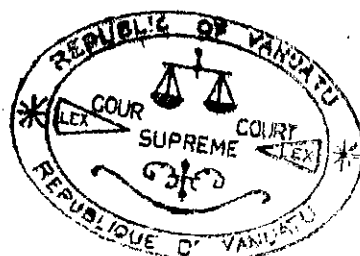
He testified that he was in the house on 6th March 1998. A car was sent to pick him up. He was given a card and told to vote with it. The card belongs to Jean Maltaus. He went in the G- plated vehicle to vote with the card at Namburu School. When he went in he was arrested by police and asked about who gave him the card. He revealed the name of the persons who gave him the card and the card was taken from him. He returned home. He further testified about voting in the Municipal elections in 1996 on a card given to him by the same man and that the man also gave a card to a student called Jean Mikael.

14. **Thomas Sanma**

He testified that he was observer at Namburu Polling Station. He saw one Henry come to vote by proxy. He saw one Eddie try to come to vote by proxy without a card. He saw three other boys come to try and vote at 4 O'clock in the afternoon. He saw a Tannese boy vote at 3 O'clock with a card belonging to a woman. He saw a boy from Vao use a card belong to another man but police removed him. He saw four boys at 3:30 pm come in to vote with bad cards. He knew two of the boys well. He said Alick Jimmy and other men came to vote at about 4 O'clock in the afternoon.

15. **John Suran**

He testified that he was observer at the Cultural Center Polling Station. He saw Jimmy Willie come to vote at about 3:30 pm. He started only at 1:30 PM as observer. He came outside at 2:30 pm. He said the door closed at about 7 – 7:30 pm. He said some people came late and Tom Alick opened the door for them to vote. Some Chinese came to vote earlier and they were refused. They had to knock on the door but police turned them



away. He said Jeanette Bolenga came after polling had closed and yet was allowed to vote.

16. **Kalo Obed**

He testified that he was observer at Namburu Polling Station on 6th March 1998. Polling Station was opened at 7:30 in the morning and that he left his house at 6 O'clock and was at the station before it opened. He said everything was in order on the table. He inspected the cards and counted them and said not every candidate's cards was available. He waited five minutes before opening time and alerted the polling officials about the problem. He gave them his list of candidates and then the polling officials then went to pick up the rest of the cards. He walked out of the room by that time and saw some mothers who came early to vote who had lost interest and said they would return home. He said polling opened one hour late after they put everything back in order. He saw two men who voted on different names in the book one of whom looked much younger than the age given in the card. The Presiding Officer knew this boy and told him to return in the afternoon and he did. He saw people come with cards and could not vote. Some came with cards for people over 60 years of age but they were very much younger. Some people came with no names or with names registered at other polling stations. Others had voted in other people's names. There were not enough people to distribute cards. Some older people missed some cards and had to be assisted by observers. He testified as to seeing Liency Fred who replaced a missing officer in the afternoon. He said ballot cards were of different colours, that Sam Mahit's was pink.

17. **Tari Lui**

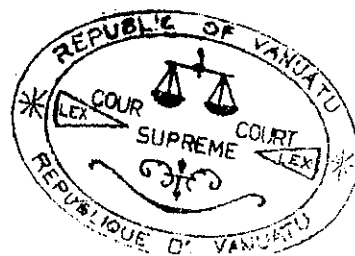
He testified that he was observer at Ex-FOL during 6th March 1998 elections. He voted on his card and then used another card to vote with which was given to him by a politician. He saw some members of another party come to vote who saw him and went away without voting. This same group was seen by him at Agriculture polling station. There were five of them in a red truck. He said he knew these people because in 1995 they did the same thing. He voted twice in 1995 using a card belonging to someone who had died. He saw many electoral cards in a carton box in the truck. He used benzine to erase the marks on his thumb.

18. **Toga Winny**

She testified that she voted at Town Hall. She said that someone had already voted in her name so she did not vote but she was told by a polling clerk to go and vote at Namburu. She did not go to Namburu to vote.

19. **Norman Banga**

He testified that he was observer at Namburu polling station. He went to the polling station at 7:30am. He said some people came but had no names on the roll. There were 4-5 rooms and he was in one room. He heard Iatika speak in language that he understood to



be Tannese but could not understand what he was saying and the observer for Captain Claes had to explain it to them in bislama . He said that at 10 O'clock in the morning the ballot box had only one lock until the polling officer was told about it. He said a boy came to vote by proxy and was discovered to be invalid but was included in the count. He said the discarded cards were all over the place and no-one bothered to pick them up.

20. Walker Daniel

He testified that he did not vote during the 6th March 1998 elections because he lost his card. He was given a card belonging to Kakae Kalo who lives on Tongoa. He said the card was given to him by a politician who told him to vote on the card but the witness said he did not vote as he knew it was against the law to do so. He said his parents cards are with a political party but not his own card.

(B) For the Respondent:

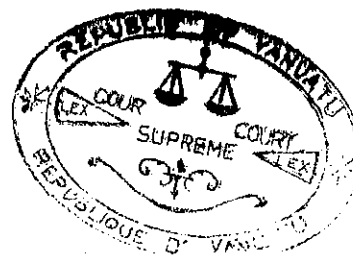
The Respondent called five witnesses whose evidence in chief I summarize briefly as follows:

1. Christian Sao:

She testified that she was polling Clerk No 1 at Colardeau Polling Station. Her job was checking people's cards against the rolls and passing them on to Polling Clerk No 2. They were opened on 6th March 1998 at 7.30 am. The ballot papers were all on a table in clear view from her position. She saw ballot papers for Captain Claes going down and the Presiding Officer told Tom Alick about it. The Presiding Officer obtained the agreement of the observers to suspend polling in order to get more ballot cards for Captain Claes. There were no ballot cards in the Electoral Office therefore Tom Alick obtained agreement of observers to pick up discarded photos. There was agreement and more photos were placed on the table for Mr. Claes and voting resumed. The shortage occurred after lunch. She said in respect of the Petitioner his cards were available all the time. She said they closed at night and then proceeded to count up the votes. She said that Tom Alick was picking up the papers and calling out the votes. She and the other polling officers recorded the results, which they cross-checked with each other's records. She said they checked the votes with the number of names crossed off and found that they tallied up. She said it was late in the night when they closed down.

2. Thomas Andrew:

He testified that he was the Presiding Officer at Colardeau School Polling Station on 6th March 1998. That he had acted as such on two previous occasions. They opened at 7.30 am. They operated from two tables. That during lunch hours only one table was in operation. Voters came in two lines to check at two tables. There were 6 polling officers. He sat at the back near the ballot box. Political observers were present. He explained the



roles of Polling Clerks 1, 2 and 3 the two first check names and crossed them off in the roll while the third merely handed out the ballot papers. There were three polling rooms and one ballot box.

Regarding voters he said some came with no names in the roll and he told the Polling Officers not to allow them to vote. He saw cards for Mr. Claes go down and sent a police officer to check at the Electoral Office. As they were no cards there he obtained agreement from the observers to suspend polling to pick up discarded ballot cards which they did. As to counting of votes he said they had to balance out the results by checking out the number of votes with the names crossed off. He said everything was equal.

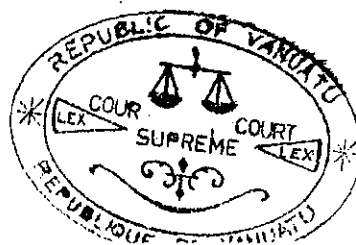
3. Tom Alick:

He testified that he is the Deputy Principal Electoral Officer appointed to be in charge of the 1998 elections for Port Vila constituency. His responsibility was to ensure that elections proceeded well. He co-ordinated the elections in Port Vila. As such he had to hold briefing sessions for all polling clerks to explain rules and procedures. He called a meeting for all Officials at SHEFA Province Chambers. He went through the Polling Instructions with the Polling officers. The Polling Instructions is tendered as Exhibit D3. He particularly emphasized to polling officers that if a person did not have his name in the roll he should not be allowed to vote. Copies of these instructions were also placed in the ballot boxes for each polling station. This meeting took place two days prior to 6th March 1998.

On polling day the witness said he had to travel to every nine polling stations to make sure everything was all right for elections to proceed. He said that his office had distributed every ballot papers to every polling station who had enough papers.

Regarding registration the witness said the process was open from January to end of May each year. Every roll has to be returned to the officer for compilation and then a 14 days inspection period is allowed after which the roll is established on 1st July of every year. During this period if a person has not registered he has to wait until after 1st July of the ensuing year. He confirmed the instruction that if a person does not have his name on the roll he should not be allowed to vote. As regards lost or destroyed cards a person could come into office and see registration officers for duplicate cards but these must be purchased at VT 100 per card. He said that for new cards there was no charge.

As regards Sam Mahit's evidence the witness confirmed that Sam Mahit had gone into his office and informed him that some members of his community had lost their cards while moving premises. That Sam Mahit asked for duplicate cards and that he went with a friend by name of Tom Mael, a registration officer. He said that too many people were with them at the time so he delegated the responsibility to Tom Mael who was with Sam Mahit. He was to go and register those people. That because they were duplicate cards Sam Mahit had to pay and he paid VT 20 000. He issued a receipt and deposited the money with the treasury. He gave Sam Mahit 270 cards and told him he would charge accordingly. Any unused cards should be returned. After Tom Mael was already operating, Sam Mahit went in to pay VT 20 000. Many people were around and Tom Alick's door was open. Sam Mahit asked him to close the door but Tom Alick told him to pay the money with the door open. He gave the money to the witness and issued the receipt. He reiterated that the money received was for duplicate cards. He said that after



people whose names were not on the roll. He said Sam Mahit returned with the cards and told him " Brata hemia now olgeta card ia. Yu wraetem igo insaed long olgeta roll ia" He said he was shocked at this point and demanded the return of the cards and told Sam Mahit to leave the office. The cards were tendered as Exhibit D1.

The witness said he explained why he could not register the names as requested by Sam Mahit because it was not the proper time for registration. He said Sam Mahit was angry and demanded his money back and alleged that the witness had stolen his money. At this the witness told Sam Mahit to leave the office.

As regards the engagement of Liency Fred, the witness explained that he was taken on in the afternoon to replace an officer who did not turn up. His job was as Polling Clerk No 3 to distribute ballot cards only to voters. He engaged Liency Fred pursuant to his powers as Co-ordinator. He said Liency Fred accepted the engagement on his own free will. He said that the job of Polling Clerk No 3 is not a difficult one at all. He confirmed that 29 candidates contested for 6 seats for the Port-Vila Constituency on 6 March, 1998.

As regards the results the witness said the Office sat down and looked at each report. They recounted votes to make sure it was the same as contained in the reports of the presiding officers. When the results were balanced it meant that everything was in order. This was done before the declaration of the official results. He produced a form tendered as Exhibit D2 showing the votes scored by each candidate which he confirmed as true copy of his compilation.

As regards voting at Colardeau School the witness said only 2 books were used to cross off names although in all 6 rolls were available and confirmed that according to the report of the presiding officer everything was balanced and therefore the result was correct.

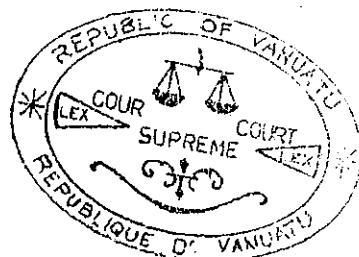
4. Fred Ottiman

He testified that he was the Presiding Officer at Vila North School. He said everything went on well during voting on 6 March 1998. He said that no ballot papers had ran out at the time, that it was not as busy as the other Polling Stations.

5. Guillain Malessas

He testified that he is the compiler at the Electoral Office. He job was to prepare the materials and stationary needed by polling Officers. He said that everything had to be put in the ballot boxes and dispatched. He explained how printing of ballot cards was done following the number allocated to each candidate by the Office. He said that the work was tedious and time consuming but he made sure every candidate had ballot papers by counting the cards again after they had been returned by the printery. He said that as an example for Colardeau with 1, 945 registered voters he had to make sure each candidate had 1, 945 cards.

Further he said for Vila North with 711 registered voters he had to make sure that each candidate had 711 ballot papers. He did the same for the other 7 polling stations which he said took him one full week. And he said he ensured that ballot papers for every



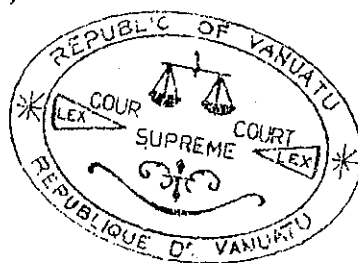
candidate was put into the ballot boxes for each respective polling Stations together with stationary before they were dispatched.

Burden and Standard of Proof

The burden is on the Petitioner to prove his case according to the civil standard of proof, that is on the balance of probabilities. This is well established principle and the cases of Salemalu –v- Paul Ren Tari and Electoral Commission (No 30 of 1998), Nikenike Vurobaravu–v- Josias Moli and Electoral Commission (No 29 of 1998) and Shem Naukaut –v- Harris Naunun and Others (No 31 of 1998) all unreported cases, are persuasive authorities for this.

The Law Taken into Consideration in Determining the Issues

1. Article 20 (1) of the Constitution states-
“The Electoral Commission shall have general responsibility for and shall supervise the registration of electors and the conduct of elections to Parliament,... The Commission shall have such powers and functions relating to such registration and elections as prescribed by Parliament.”
2. Article 17 (1) of the Constitution states-
“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 opinion.”
3. Article 4 (2) of the Constitution states-
“The franchise is universal, equal and secret. Subject to such conditions or restrictions as may be prescribed by Parliament, every citizen of Vanuatu who is at least 18 years of age shall be entitled to vote.”
(emphasis.Mine)
4. The requirements of that secrecy are provided under Section 51 of the Representation of the People Act [CAP 146] (the Act) which states-
“(1) Every election officer, candidate, or other person lawfully attending at a polling station shall maintain and aid in maintaining the secrecy of voting and shall not, except for some purpose authorised by law, communicate to any person any information as to-
 - (a) the name of any voter who has not applied for a ballot paper or voted at a polling station, or
 - (b) the number on the register of any voter who has or has not applied for a ballot paper or voted at a polling station, or
 - (c) an official mark.



- (2) Every person attending at the counting of votes shall maintain and aid in maintaining the secrecy of voting and shall not without authority communicate any information in connection there-with.
- (3) No person shall-
- (a) interfere with or attempt to interfere with a voter when recording his vote,
 - (b) otherwise obtain or attempt to obtain in a polling station information as to the candidate for whom a voter in that station is about to vote or has voted, or
 - (c) communicate at any time to any person any information obtained in a polling station as to the candidate for whom a voter in that station is about to vote or has voted, or
 - (d) directly or indirectly induce a voter to display his ballot paper after he has selected it or marked it, as the case may be, so as to make known to any person the name of the candidate for whom he intends to vote or not to vote.
- (4) No person who has undertaken to assist-
- (a) a blind voter., or
 - (b) a voter who is incapacitated from voting by other physical cause to vote, shall communicate at any time to any person any information as to the candidate for whom that voter intends to vote or has voted.
- (5) Any person who contravenes any provision of this section commits an offence and shall be liable on conviction to a fine not exceeding VT40,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.”

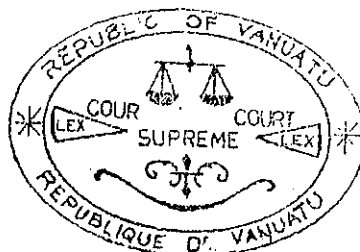
Section 54 of the Act states-

- “(1) The validity of any election to Parliament may be questioned by a petition brought for that purpose under this Act and not otherwise.
- (2) Every election petition shall be heard by the Supreme Court.”

Section 58 (1) of the Act states-

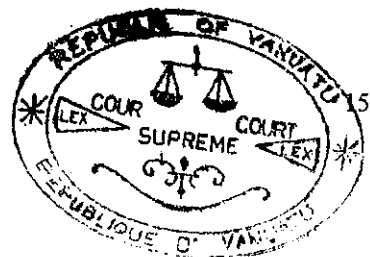
“An Election petition shall be in writing and shall specify the ground or grounds upon which an election is disputed”
 (emphasis, Mine).

Section 61 of the Act states-



- “(1) The election of a candidate may be declared void on an election petition if it is proved to the satisfaction of the Supreme Court, that-
- (a) bribery, treating, undue influence or other misconduct or circumstances whether similar to those herein before enumerated or not, have so extensively prevailed that they may reasonably supposed to have affected the result of the election.,
 - (b) there has been such non-compliance with the provision of this Act, in the conduct of polling or in any other matter that such non-compliance affected the result of the election.
 - (b) the candidate at the time of his election is a person not qualified or disqualified for election., or
 - (c) there was such irregularity in the counting of the votes as may reasonably be supposed to have affected the result of the election.
- (2) The election of a candidate may be declared void if he is convicted by a Court of committing a corrupt practice or attempting or conspiring to commit a corrupt practice.
- (3) Not-with-standing the provisions of subsection (1)-
- (a) where upon the hearing of an election petition the Supreme Court finds that any agent of a candidate has been guilty of a corrupt practice and the Supreme Court further finds that the candidate has proved to the Supreme Court that-
 - (i) no corrupt practice was committed by the candidate himself or with his knowledge or consent or approval.,
 - (ii) the candidate took all reasonable means for preventing the commission or corrupt practices at such election.,
 - (iii) in all other respects the election was free from any corrupt practice on the part of the candidate., and
 - (iv) such corrupt practices did not affect the result of the elections, then, if the Supreme Court so decided, the election of such candidate shall not by reason of any such practice be void.,
 - (b) Where upon the trial of an election petition the Supreme Court finds that there has been failure to comply with any provision of this Act but the Court further finds, that it is satisfied that the election was conducted in accordance with the principles laid down in this Act and that such failure did not affect the result of the election, the election of the successful candidate shall not by reason of such failure, be void.” (Underlining, Mine)

Findings



Applying the law to the facts as presented in evidence by both parties and generally, I find as follows:-

1. The Petition of the Petitioner is defective for the following reasons:
 - (a) It fails to specify or name the candidate or candidates whose elections the Petitioner is challenging.
 - (b) It fails to join the candidate or candidates whose elections the Petitioner is challenging together with the Respondent.

To bring a petition under section 54 of the Act and make allegations under section 61, the Petitioner must specify the name of the candidate (s) he is challenging and must join such candidate(s) with the Electoral Commission. This is the practice as has been done in Civil Case No. 29 of 1998, Nikenike Vurobaravu -v- Josias Moli and Electoral Commission, Civil Case No. 30 of 1998, Peter Salemalu -v- Paul Ren Tari and Electoral Commission and Civil Case No.31 of 1998, Shem Naukaut -v- Harris Iaris Naunun -v- Morking Stephen, Willie Posen and Electoral Commission.

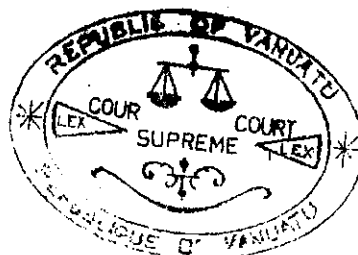
Further, the Petitioner must join all the persons who qualify to present a petition under section 55 of the Act if he wishes to challenge the whole of the election results of a constituency.

2. The Petitioner has not complied with the provision of section 58 (1) of the Act. He relies on section 61 (1) (b) of the Act which provides that the election of a candidate may be declared void if it is proved to the satisfaction of the Court that there has been such non-compliance with the provision of the Act in the conduct of polling or in any other matter that such non-compliance affected the result of the election.

What did the Petitioner have to show? He had to show to the satisfaction of this Court which provision of the laws, rules, orders or regulations the Electoral Commission had breached. That, pursuant to section 58 (1) of the Act should have been specified in the Petition. They were not so specified.

What else did the Petitioner have to show to the satisfaction of the Court? He had to show to the satisfaction of the Court that the persons that the Petitioner alleges were permitted to vote who names were and are not registered in one particular polling station were persons who would have voted for him and to show that such would affect the result of the election as regards himself, not others, because he was the sole petitioner. Further he had to show to the satisfaction of the Court that the votes that did not tally with the electoral list were persons who would have voted for the Petitioner. That seemed an impossible task because voting is secret.

Article 4 of the Constitution is clear on that point. Also section 51 of the Act provides the requirements of that secrecy. I am therefore persuaded by



the submissions of Mr Bani that there is no cogent evidence provided by the Petitioner to prove his case against the Respondent.

3. The evidence by the Petitioner's witnesses show commissions of certain election offences by individuals and election officers. These offences are contained in Part 15 sections 40-53 of the Act. Those will be dealt with under section 64 of the Act which states-

"The Supreme Court shall if in its opinion anyone has committed an offence of a corrupt practice in connection with an election to which a petition heard by it relates, send a written report in respect thereof to the Public Prosecutor"

The purpose for this course of action is to deter and curb further practices in future elections.

4. There is evidence of some relevance from Norman Banga in relation to the ballot box at Namburu polling station not having two padlocks as required by Rule 4 (2) of the Election of Candidates Rules in Schedule 5 of the Act. Rule 4 (2) states-

"Each ballot box shall have 2 padlocks with dissimilar keys and shall be so constructed that when locked, ballot papers can be put therein but cannot be withdrawn."

The Respondent's witnesses did not disprove that the ballot box at Namburu Polling station had only 1 padlock for a good part of the morning of 6th March 1998. But that non-compliance by itself is not sufficient ground upon which the Court could declare the elections of 6th March, 1998 void and I so rule.

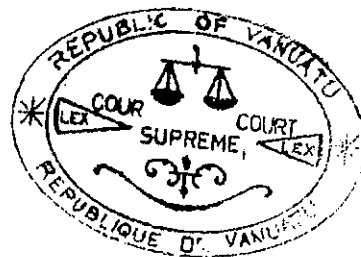
5. Again of some relevance is the evidence of Mary Seule who told the court in examination in-chief that of the ballot cards she was given at Colardeau School, there was none for the Petitioner. Therefore she had to put in an empty envelope.

In cross-examination by Mr Bani the witness was asked whether the photos (ballot papers) for her candidate was there and she answered: "Yes, hemi stap be oli no givim long mi".

Asked whether she asked for it, the witness said "Mi no askem".

Had she asked she would have been given her candidate's ballot card and had she voted the Petitioner would only have an increase of votes by 1 from 270 to 271. That non-compliance is not sufficient grounds upon which this Court could declare the elections of 6th March, 1998 void and I so rule.

6. From the evidence of Serah Cakau she too dropped in an empty envelope because the ballot cards for her candidate were not available. Her candidate was not the Petitioner and that candidate has not been joint as a Petitioner.



I rule therefore that her evidence is irrelevant.

7. Finally it has been admitted by Tom Alick Kalo, Deputy Principal Electoral Officer who was appointed Co-ordinator for the elections that there was a typing error on the figures shown in paragraph 15 of the Official Declaration issued by the Respondent on 16th March, 1998 as regards the Port Vila Constituency. The figures shown are-

Registered Voters	:	18, 663
Votes cast	:	6,500
Turn Out	:	35%
Void Votes	:	70
Valid Votes cast	:	6, 430

Mr Kalo conceded that the number of votes cast stated as 6, 500 was the wrong figure and that the correct figure should have been 7,092 and not 6,430 as stated by the Respondent. That would mean also that the percentage of turn out was not 35% as stated but 38%. Checking the calculations by simply adding up the number of votes gained by each 29 candidates as stated on the right hand side we get a total of 7,022. This number excludes the void votes.

Mr Kalo tendered into evidence a document Exhibited D2 and told the Court that that was the original documents from which the figures in paragraph 15 were taken. They reveal the correct totals which, except for the turn out percentage which should have been 38%, were-

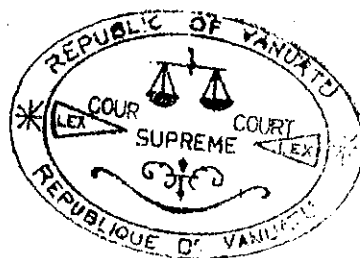
Registered voters	:	18, 663
Votes cast	:	7, 092
Void votes	:	70
Valid votes	:	7, 022.

Mr Kalo explained that he had received instructions from the Chairman of the Electoral Commission to have the errors rectified. Whether that was done at all remains unclear but it is my view that the error made by the Respondent cannot amount to a non-compliance upon which this Court could declare the results of 6th March 1998 elections void and I so rule.

The fact that the Respondent could not get their calculations right by simple additions may show a lack of competence and/or negligence of duty on the Respondent's part. Further that they caused to be published official results in an official document without publishing an amended one after rectifying the errors display a lack of competence and/or negligence.

This Court has been asked by the Petitioner to make a declaration to that effect but that is something I do not think this Court can do. That would be left entirely to the appropriate authorities to look into.

I am however satisfied that the figures shown by the Respondent's document Exhibit D2 are the correct figures except for the turn out percentage of 38% instead of 35%.



I am satisfied that that document amounts to a Notification required under Rule 20 of the Election of Candidates Rules and I so rule.

Rule 20 states-

"When a registration officer has received all the reports provided for in rule 19 including reports from any polling stations where a new poll has been held under the provisions of section 35 he shall notify the Electoral Commission of the number of votes cast for each candidate in the constituencies for which he is responsible."

Conclusion

For the foregoing reasons and pursuant to the powers given to the Court under section 60 (1) (c) of the Act, **I HEREBY DISMISS** the Petitioner's petition and **DECLARE** that-

NIPAKE EDWARD NATAPEI;
WILLIE JIMMY;
MAXIME CARLOT;
WILSON RAY ARU;
CLEMENT LEO., and
HENRI TAGA TARIKAREA

were **DULY ELECTED.**

There will be no order as to costs. Each party must meet their own costs of the trial of this Petition. I further direct that all documents tendered as Exhibits P2, P4, P6 & D1 be returned to the Respondent.

DATED at Port Vila this 18th day of June 1999

BY THE COURT



OLIVER A. SAKSAK
Judge

