

**(Administrative Jurisdiction)**

**BETWEEN: MOSES WAYNE**

Applicant

**AND: ELECTORAL COMMISSION**

First Respondent

**AND: SANMA PROVINCIAL COUNCIL**

Second Respondent

**AND: MINISTER OF INTERNAL  
AFFAIRS**

Third Respondent

**AND: BERNARD VIRA**

Fourth Respondent

**AND: KALMER VOCOR AND  
GAIION PIKIOUNE**

Fifth Respondent

**Date of Hearing: 17<sup>th</sup> May, 2001 at 2 p.m.**

**Coram: Mr Justice Oliver A. Saksak  
Mrs Mandeng M. John – Clerk**

**Counsel: Mr Hillary Toa for the Applicant  
Mr Bill B. Tangwata for the Second Respondent  
Mr Daniel Yahwa for the Fourth and Fifth Respondents  
No Appearance by or on behalf of the First and Third Respondents.**

## **JUDGEMENT**

This matter was first heard ex parte on 10<sup>th</sup> May, 2001.

The Applicant sought leave to apply for judicial review and for an order for certiorari to quash the decisions of the Electoral Commission and the Minister of Internal Affairs' approval of late entries submitted by the Fifth Respondents to be published in the Official Gazette on 10<sup>th</sup> January, 2001 other than the supplementary list of 30<sup>th</sup> November, 2001. Further that the entries published on 10<sup>th</sup> January, 2001 in the Official Gazette be declared null and void.

There were other orders and declarations sought by the Applicant as well but the Court simply granted leave to him to apply for judicial review and for certiorari to bring up orders to be quashed.

Today Mr Daniel Yawha appears on behalf of the Fourth and Fifth Respondents respectively. Mr Yawha informs the Court that the case does not concern his clients and his appearance is simply to assist the Court and to abide by any orders of the Court.

Mr Tangwata submits that the Court should use its inherent jurisdiction to order the Electoral Commission to publish another gazette with the correct list being that of 30<sup>th</sup> November, 2000. He argued that the Chairman of the Electoral Commission has admitted clearly that there was an error in the publication of results in Gazette dated 10<sup>th</sup> January, 2001.

Mr Toa for the Applicant agrees with this submission. Mr Yawha consents to the making of such an order because his client the Fourth Respondent would not be adversely affected by the publication of the correct list of 30<sup>th</sup> November, 2000.

From the documents before the Court, it is my view that the correct list to have been published by the Electoral Commission is the Supplementary list of 30<sup>th</sup> November, 2000. The only reason provided for not gazetting that list is because it had official signatures of the Commission and the official stamp on it. This can be easily rectified by creating another copy.

There is clearly a need for the matter to be rectified and resolved. There is absolutely no justification for the other two candidates with lesser number of votes to be on the Council when clearly there are two others who scored the highest number and the third highest number. By those number of votes, these two candidates are entitled to sit on the Council as duly elected Councillors.

For these reasons the Court Orders as follows:-

- (1) It is accordingly declared that the election results published in the official gazette dated 10<sup>th</sup> January, 2001 is null and void and of no effect.
- (2) The Electoral Commission be required to publish the correct list being that of 30<sup>th</sup> November 2000 in another Official Gazette within 14 days from the date of this order.
- (3) The First and Third Respondents be given liberty to apply to have these orders set aside on three clear days notice to the other parties within 14 days from the date of this Order.

**DATED at Luganville this 17<sup>th</sup> day of May, 2001.**

**BY THE COURT**



**OLIVER A. SAKSAK**

**Judge**