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

CONSTITUTIONAL CASE No.07 OF 2009

BETWEEN: **JOE IAUTU**
 Applicant

AND: **THE REPUBLIC OF VANUATU**
 Respondent

Coram: *Chief Justice Vincent Lunabek*

Counsel: *Mr Edward Nalyal for the Applicant*
 Messrs Justin Ngwele and Avock Godden for the Respondent

Hearing date: *19 November 2009*

Judgment date: *20 November 2009*

JUDGMENT

This is an Urgent Constitutional Application. On 18 November 2009, the Applicant, Joe Iautu filed this Urgent Constitutional Application seeking Orders and Declaration contained in the application itself. He filed a sworn statement of urgency in support of his application.

The Court is informed that after the passing away of the late Honourable Ture Kailo on 23 October 2009, a by-election will be held on 15 December 2009 to fill in the parliamentary vacant seat of the Tafea Outer Islands Constituency previously occupied by late Ture Kailo.

The date of 20 November 2009 is said to be the last date for potential candidates to lodge their applications to contest the by-election on the Tafea Outer Islands Constituency.

The Applicant, Mr Joe Iautu, intends to contest the said by-election. He however was advised by the Principal Electoral Officer through the copy of his letter dated 13 November 2009, to Hon. Joe Natuman, Minister of Foreign Affairs who

The seal of the Supreme Court of Vanuatu is located at the bottom right of the page. It features a central emblem with a scale of justice and the text 'REPUBLIC OF VANUATU' at the top, 'COURT OF JUSTICE' in the middle, and 'LEX SUPREMA LEX' at the bottom. A handwritten signature is written over the seal, and the number '1' is printed to its right.

assisted Mr lautu, that Mr Joe lautu is not enrolled on Aniwa Island or on Efate Island and therefore he could not contest the by-election.

Mr lautu urgently apply for this Constitutional Application seeking for the Supreme Court redress under Articles 6 and 53 of the Constitution.

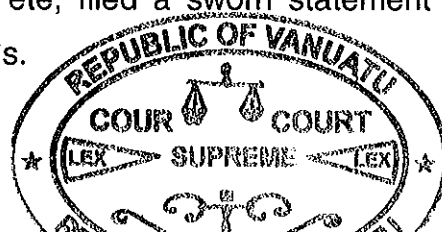
Counsel and the Court consent that there is urgency to deal with the present application. The Court directs that all relevant Constitutional Rules provisions are abridged. The Constitutional Application is now dealt with as a matter of urgency.

In his urgent Constitutional Application, Mr Joe lautu applies for the following Orders and Declarations:

1. A declaration that his right to vote under Article 4(2) of the Constitution has been infringed.
2. A declaration that his right to protection of the law under Article 5(1)(b) of the Constitution has been infringed.
3. A declaration that his right to stand for election to Parliament under Article 17(2) of the Constitution has been infringed.
4. An order that the decision of the Principal Electoral Officer of the Republic of Vanuatu dated 13 November 2009, refusing to accept the Applicant's application to contest the Tafea Outer Islands constituency by-election on 15 December 2009 be quashed.
5. An order that the Principal Electoral Officer and the Electoral Commission of Vanuatu immediately issue an electoral card to the Applicant, reinstate him to the electoral roll and enable the Applicant to contest the Tafea Outer Islands by-election of 15 December 2009.
6. Any other Orders this Court considers just.
7. Costs against the Respondent.

Mr lautu and one Lenon Nauka filed each a sworn statement in support of the application.

The Principal Electoral Officer, Mr Martin Tete, filed a sworn statement on 19 November 2009 in response to the Applicant's.

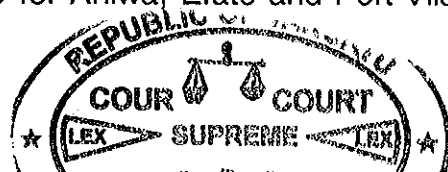


I have read the sworn statements filed in support of the application and the response. There is no great deal of factual disputes. The following common facts emerge:

The Applicant, Joe lautu is a ni-Vanuatu. He comes from Aniwa Island. He is now 32 years of age. He moves from Aniwa Island and lives in Port-Vila from about 10 years. He is an employee of the Vanuatu Tourism Office. The Parliament seat of the Tafea Outer Islands constituency became vacant after the death of the late Honourable Ture Kailo on 23 October 2009. The Applicant, Joe lautu, intended to contest the by-election of the Tafea Outer Islands constituency to be conducted on 15 December 2009. Candidates must lodge their application to contest that by-election by 20 November 2009.

On 12 November 2009, the Applicant went to the Electoral Office to file his application. He was advised that his name was not on the Electoral Roll of Aniwa or Port-Vila. Mr lautu sought assistance from Honourable Joe Natuman, Minister of Foreign Affairs for his name to be on the Electoral Roll. A telephone conversation was conducted between Minister Natuman and the Principal Electoral Officer, Mr Martin Tete on the matter. On 13 November 2009, the Principal Electoral Officer wrote a letter to the Hon. Minister Natuman advising that the Applicant, Joe lautu, was not a registered voter on Aniwa or on Efate and that he is not eligible to contest the by-election of the Tafea Outer Islands of 15 December 2009. A copy of that letter was sent to the Applicant. On the same date of 13 November 2009, Mr Edward Nalyal wrote a letter to the Principal Electoral Officer, Mr Martin Tete, requesting that the Applicant, Joe lautu, be reinstated on the roll. Mr Edward Nalyal wrote another letter on 16 November 2009 to the Attorney-General and copied to the Principal Electoral Officer requesting the Attorney-General to advise the Principal Electoral Officer to register the Applicant, on the Electoral Roll. On 12 November 2009, a search of the Rolls for Aniwa, Efate and Port-Vila was undertaken for the years 2004-2009 and the name of the Applicant, "lautu Joe" could not be found. It is not on the Rolls.

On 18 November 2009, at the request of a person by the name of "Philip" for a search of the Rolls for the years 2004 to 2009 for Aniwa, Efate and Port-Vila be



conducted for the name "Jehu Ture". The name "Jehu Ture" is not included on any of the Rolls for these constituencies. A search of the Rolls for Aniwa, Efate and Port-Vila for the 2000-2003 was conducted on 19 November 2009. The name "lautu Joe" or "Jehu Ture" are not included on the Rolls. The Applicant alleged that he was registered on the Roll of Aniwa. He used to vote by proxy. He alleged that his name was removed in 2003 by a registration officer, Mr Lenon Nauka. Mr Lenon Nauka filed a statement to confirm that contention.

In his letter of 16 November 2009, Mr Edward Nalyal informed the Attorney General that in 2008 General Elections, the Applicant, instructed his brother to vote for him by proxy. When he turned up to vote, he discovered that Mr lautu's name had been removed from the Roll for Aniwa.

The Applicant is taken to have known through his brother who used to vote for him by proxy that his name was not on the Aniwa Electoral Roll since 2008.

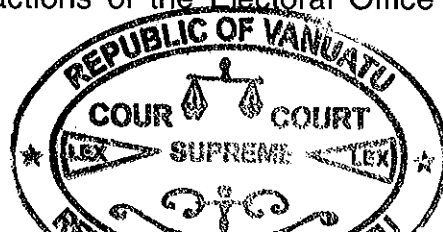
The Applicant should have petitioned the Principal Electoral Officer if he considers that his name has been wrongly omitted from an electoral list with such evidence and declarations to the Principal Electoral Officer pursuant to Section 14 of the Representation of the People's Act [CAP.146]. No such steps have been taken since 2008.

The Applicant fails to avail himself to the process and requirements set under the Representation of the People's Act [CAP.146]. He could not have recourse to a Constitution Application for the following reasons:

The rights of citizens to vote and to stand for election to Parliament as provided for by Articles 4(2) and 17(2) of the Constitution are subject to the conditions or restrictions as may be prescribed by Parliament.

Parliament has enacted the Representation of the People's Act [CAP.146] (the "Act") which imposes relevant conditions or restrictions.

There is nothing to suggest that any of the actions of the Electoral Office are contrary to any of the provisions of the Act.



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Neither the Application or the sworn statements disclose an infringement of the Applicant's constitutional rights prescribed by Articles 4(2) or 17(2) of the Constitution. The Application or the sworn statements do not disclose an infringement to the Applicant's constitutional fundamental right of the protection of the law guaranteed by Article 5(1)(b) of the Constitution.

Accordingly, the Application is misconceived. There is no arguable infringement of the Constitution.

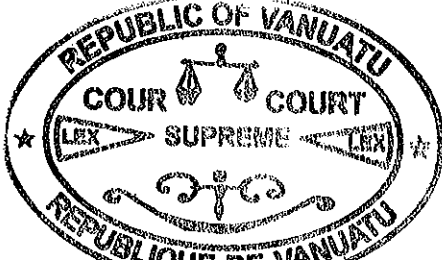
At best, assuming that the complaint is a complaint that the action of the Electoral Office was ultra vires the Act, the application should have been made as an application for judicial review. This is not a case in which the Applicant had the alternative of duplicating general proceedings with constitutional proceedings. There is no Constitutional Application to answer.

Mr Edward Nalyal, counsel for the Applicant refers this Court to the case of **Masdan v. Electoral Commission** (2000) VUSC 27. That case cannot assist the case of the Applicant. It was not a constitutional application case. It was an action for judicial review.

The Court notes the following interesting part of the judgment at (page 11) and judicial notice can be taken of it to appreciate the circumstances of this present case:

"The last General Election held was that of 1998. At that election there were lots of discrepancies which import a lot of problems into the election system, the Electoral Commission decided to apply strictly Section 9(1) of the Representation of the People's Act [CAP.146] which stated that a proposed voter should be registered to vote in the polling station where he/she is residing.

In 1999, the Electoral Commission decided to put in place a new registration system with the issuance of new electoral cards. Registration officers were sent in all constituencies."



Sometime in March 2003, Lenon Nauka, said when he was in Aniwa when he received the Electoral Roll for Aniwa, he checked the Aniwa Roll and removed the names of people of Aniwa who do no longer live on the Island but reside on different places or Islands such as Tanna or Port-Vila and names of deceased persons of Aniwa. Nauka said one of the names he had removed was Jehu Ture. He further said he tried to contact the Applicant, but was unsuccessful because he was overseas.

In the 2008 General Elections, the Applicant had instructed his brother to vote for him on Aniwa by proxy, but when his brother turned up to vote, he discovered that Mr lautu's name had been removed from the Roll. The Applicant was aware and had the knowledge that his name had been removed from the Electoral Roll since 2008. The question is whether the Applicant has taken steps to remedy the situation before making this Urgent Constitutional Application.

Below are the relevant process set under the Representation of the People's Act [CAP.146]:

A citizen who has reached the age of 18 years is eligible for registration in the electoral list for the polling district in which he is a resident at the time of the preparation of the electoral list. (Section 9 of the Act).

The electoral list is made available for inspection each year during a period of not less than 14 days which shall end on or before the 15th day of June. (Subsection 16(1) of the Act).

A person who is eligible for registration in the electoral list may apply for inclusion in the list before the end of the inspection period. (Subsections 16(3) and (4) of the Act).

The electoral roll for each polling district is established on the 1st day of July. (Section 20 of the Act).

When a person is registered on an electoral list, he is issued with an electoral card.



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In this case, the Applicant has failed to produce an electoral card. The explanation that his electoral card has been destroyed or lost cannot be accepted and is, thus, rejected.

The Applicant is not registered in the electoral roll in either name by which he is known since his knowledge of the removal of his name in 2008.

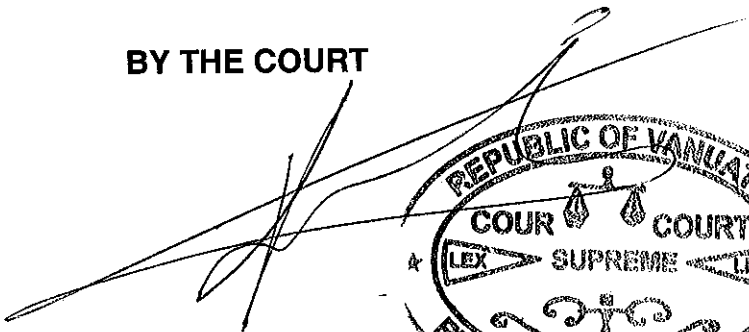
The Applicant is not eligible to stand as a candidate for election to Parliament. (Subsection 24(1)(a) of the Act.

ORDER

The Urgent Constitutional Application is dismissed. The Respondent is entitled to its costs assessed at 100,000 VT against the Applicant. Such costs shall be paid by the Applicant to the Respondent by 20 December 2009.

DATED at Port-Vila this 20th day of November 2009

BY THE COURT


Vincent LUNABEK
Chief Justice

