

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

CIVIL CASE No.11 OF 2010

BETWEEN: MANU IAIOFA, LOUIS CARLO, DANIEL BULE,
ROGER ABIUT, SETAK JACK, KARL DAVID,
TIRO VANUA and APIA MAWA
Applicants

AND: HONOURABLE EDWARD NIPAKE NATAPEI
TUTA FANUARIKI
First Respondent

AND: HONOURABLE EDWARD NIPAKE NATAPEI
TUTA FANUARIKI
HONOURABLE JOE NATUMAN
HONOURABLE SELA MOLISA
HONOURABLE PHILIP BOEDORO
HONOURABLE MOSES KAHU
HONOURABLE BOB LOUGHMAN
KALMAN KALTOI, DAVID TEVI, CHRITINA
WILSON, TONY NGARI, PASTOR NIDITAWAI,
DANIEL MOLISA, NIKENIKE VUROBARAVU,
PAUL AVOCK HUNGAI, JACOB MATA,
MERELYNE ARHANABAT ABEL,
HONOURABLE BAKOA KATONGGA,
LEINAVAO TASSO, ISABELLE DONALD,
JOHN MORSEN WILLIE and LIVO ALICK
Second Respondents

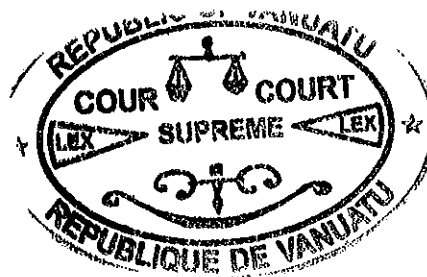
Coram: Chief Justice Vincent Lunabek

*Counsel: Mr Silas Hakwafor for the Applicants
Mr Edward Nalyal for the First and Second Respondents*

REASONS FOR ORDERS OF

5 FEBRUARY 2010

On 5 February 2010, upon hearing Mr Silas Hakwa on behalf of the Applicants and Mr Edward Nalyal on behalf of the First and Second Respondents and upon hearing submissions and arguments from both counsel on behalf of the Applicants and the Respondents, the Court makes the following Orders:



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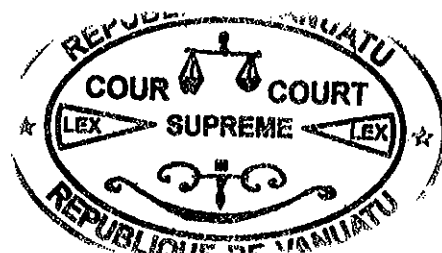
“ORDERS

1. The Court is satisfied that Article 3A(i) of the Vanuaaku Pati Constitution has been breached.
2. A Vanuaaku Pati Congress must be held in accordance with Article 3A(i) of the Vanuaaku Pati Constitution.
3. The Vanuaaku Pati had held its last Congress on 26-30 August 2007 at Ifira Tenuku. It was the 36th Vanuaaku Pati Congress. It was resolved, among other matters, that the 37th Vanuaaku Pati Congress shall be held on the Island of Tongoa, Shefa Province and that that Congress mandated the Executive Council of the Vanuaaku Pati to set the date and time of the next Vanuaaku Pati Congress on the Island of Tongoa, Shefa Province.
4. After submissions and arguments from both the Applicants and the Respondents, the Court accepts and endorses the date of 1 April 2010 to be the date for the 37th Vanuaatku Pati Congress to be held on the Island of Tongoa, Shefa Province in execution of the resolution 24 of the Vanuaaku Pati 36th Congress held on Ifira Tenuku in 2007.
5. The Executive Council of the Vanuaaku Pati shall take necessary steps and arrangements to hold the Vanuaaku Pati 37th Congress on the Island of Tongoa, on 1 April 2010.
6. The costs are awarded in favour of the Applicants and such costs to be agreed or taxed.

Below are short reasons for the above orders.

The Applicants filed an Urgent Application on 29 January 2010. They seek the following Orders:

- (a) An Order that the First Respondent and/or Second Respondents forthwith call and/or convene a meeting of the Congress of the Pati (hereinafter referred to as



"the Congress") which shall be at Lumbukuti village on Tongoa beginning on 07 February 2010.

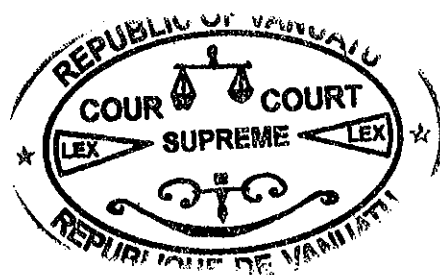
- (b) An Order that the First Respondent and/or Second Respondents forthwith take all such steps as are necessary and in accordance with the Constitution so as to ensure that Congress is lawfully convened at Lumbukuti village on Tongoa beginning 07 February 2010.
- (c) Such further or other orders as this Court shall deem fit.
- (d) Costs of and incidental to this Application.

The First and Second Respondents file a response to the Urgent Application on 2 February 2010. They say, among other matters, that the Applicants are not entitled to the relief they seek. They deny the assertions in the Application. They say the Applicants are not members of Vanuaaku-Pati (VP). They say the sub-committees they claim to represent are not approved by the VP Congress and they therefore say that the Applicants have no standing. They say the proper procedure of the Vanuaaku-Pati in approving a statement or decision from a sub-committee has not been followed in obtaining signatures on the positions. They say the Chairman of the sub-committees and the sub-committees have not authorised the signing of the petitions. They say they continue to hold office in accord with Article 3D(iv) of the Vanuaaku-Pati Constitution until the election of the members of the Executive Council by the Congress. They say the Executive Council is mandated by the Vanuaaku-Pati Ifira Congress to set a date and time of the next congress.

They admit in general the following paragraphs or part of the application:

Paragraphs 6, 8, 10, 14, 15, 16, 17, 18, 21, 23. They deny the balance of the assertions in the application.

The Applicants file four (4) sworn statements of following deponents: Manu Iaiofaof Tanna Island, Louis Carlot of Erakor Village, Efate and Roger Abiut of Itakuma Village, Tongoa on 29 January and 2 February 2010 in support of the Application and one sworn statement of Mr Hakwa of counsel in support of the urgency.



The Respondents also file 10 following statements on 3rd and 4th February 2010 in support of their response to the Urgent Application.

- sworn statement of Sam Namon of Tanna
- sworn statement of William Kalsong of Mangaliliu, North West Efate
- sworn statement of Pastor Albert Miller of Takana, North Efate
- sworn statement of Peter Kaulei of Waisisi Village, Mele Road, Port-Vila
- sworn statement of Roy James of Saama, North Efate
- sworn statement Abel Tari of Lolovange village, North Ambae
- sworn statement Kalpeau Vatoko of Mele Village, Efate
- sworn statement of Morris Anchie of Paunagisu village, North Efate
- sworn statement of Norman Ben of Emua Village North Efate
- sworn statement of Obed Kanas of Siviri village, North Efate.

On 5 February 2010, the issue of Urgency was dealt with as a matter of preliminary question to be determined by the Court.

Through the process of submissions and arguments and upon reading the relevant sworn statements of counsel and sworn statements of other deponents of the urgency issue, it became apparent, that Article 3A(i) of the Constitution has been breached in that after the last Vanuaaku-Pati Congress held at Ifira Tenuku in August 2007, no Vanuaaku-Pati Congress was ever held either in the years 2008 and 2009 whereas Article 3A(i) of the Vanuaaku-Pati Constitution provides expressly that:

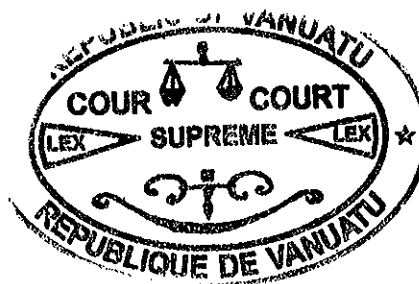
"3. RULING BODIES

A. Congress

Establishment

- (i) *The Party shall have a "Congress" which shall meet at least once a year.*

...."



Counsel for the First and Second Respondents conceded that there was no Vanuaaku Pati Congress held in 2008 and 2009.

There were material evidence attached to the sworn statements of the Applicants claiming that they were members of Vanuaaku Pati and some of them received warning letters from the First Respondent, President of the Vanuaaku Pati. That is one of the reasons they seek the urgent relief before the Supreme Court. They said they were concerned because different dates were advanced by the Executive Council of Vanuaaku Pati for the Congress to meet but since the Congress at Ifira Tenuku, no congress was ever held despite the provisions of the Vanuaaku Pati Constitution.

After submissions and arguments from counsel, the Court dealt with the matter as a matter of urgency as there was no dispute between the Applicants and the Respondents that relevant provisions of the Vanuaaku Pati Constitution and in particular Article 3A(i) was not complied with.

The only point in issue is the date and time for the next Vanuaaku Pati Congress.

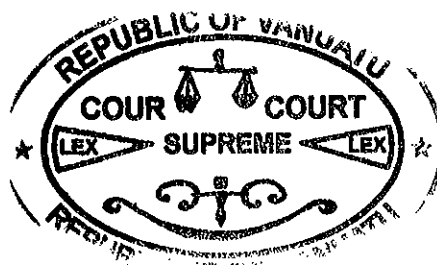
Again after submissions and arguments of counsel, the Court invited both parties to agree on a date and time for Vanuaaku Pati Congress to meet. No date and time were agreed to by both parties.

By perusing the provisions of the Vanuaaku Pati Constitution and the Resolutions of the Vanuaaku Pati Congress of Ifira Tenuku of 2007, there were evidence in terms of Vanuaaku Pati Congress Resolutions that the Congress as the supreme making body of the Party mandated the Vanuaaku Pati Executive Council to set the date and time of the next Vanuaaku Pati Congress. The Vanuaaku Pati Executive Council are the First and Second Respondents. They suggested the date of 1 April 2010 as the date for the Vanuaaku Pati Congress to meet on Tongoa. It was accepted and endorsed by the court on 5 February 2010.

Those are the reasons for the Orders made on 5 February 2010.

In this type of cases, the Court relied on the following guiding authorities:

- Mataskelekele v. Abil No.1 [1991] VUSC7; [1980-1194] Van LR 512 (6 August 1991)

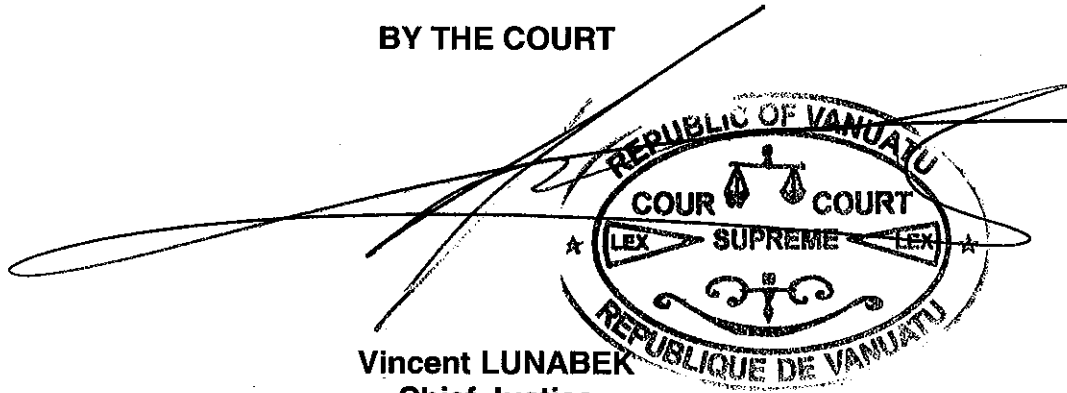


- **Mataskelekele v. Abil No.2** [1991] VUCA 1; [1981-1994] Van LR 517 (2 September 1991)
- **Korman v. Edouard** [1995] VUSC7; Civil Case 106 of 1995 (9 November 1995)
- **Vohor v. Adeng** (1996) VUSC 14; Civil Case No.075 of 1996 (27 August 1996)
- **Vanuatu Mission of the Seventh Day Adventist Church v. Seventh Day Church of the Republic of Vanuatu** [1996] VUSC 19; Civil Case No.057 of 1996 (19 September 1996)
- In re the Application by **Willie Jimmy Tapanga Rarua** [2000] VUSC 29; Civil Case No.86 of 1999 (26 June 2000)
- **Kalpokas v. Natapei** [2004] VUSC 55; Civil Case No.86 of 2004 (10 June 2004).

I am grateful for counsel's assistance in this matter. I record my thanks and encouragement to persons or associations, individuals, leaders and members of the associations of any kind to resolve their differences according to law.

DATED at Port-Vila this 5th day of February 2010

BY THE COURT



**Vincent LUNABEK
Chief Justice**