

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

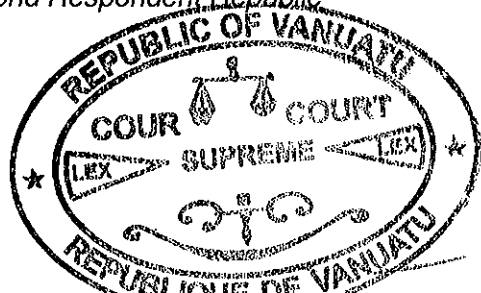
Constitutional Case No.07A of 2011

BETWEEN: Hon. Meltek Sato Kilman Livtunvanu,
Prime Minister
Hon. Ham Lini Vanuaroroa, MP
Hon. Moana Kalosil Carcasses, MP
Hon. George Andre Wells. MP
Hon. Alfred Carlot, MP
Hon. Marcellino Pipite, MP
Hon. Iauko Harry Iaris, MP
Hon. Morken Steven Iatika, MP
Hon. Steven Kalsakau, MP
Hon. Willie Reuben Abel, MP
Hon. Ralph Regenvanu, MP
Hon. Don Ken, MP
Hon. James Ngwango, MP
Hon. Willie Lop, MP
Hon. Toara Daniel Kalo, MP
Hon. James Bule, MP
Hon. Rean Ravou KOLOUMULE, MP
Hon. David Tosul, MP
Hon. David Tienne Arieasuv, MP
Hon. Dustan Hilton, MP
Hon. Philip Charley, MP
Hon. Isaac Marmouliu, MP
Hon. Raphael Worwor, MP
Hon. Louis Etap, MP
Hon. Havo Moli, MP
Hon. Donna Brownie, MP
Hon. Samsen Samson, MP
Hon. Esmon Saimon. MP
Applicants

AND: HON. MAXIME CARLOT KORMAN,
Speaker of Parliament
Respondent

AND: THE REPUBLIC OF VANUATU
Second Respondent

Counsel: Mr Alatoi Ishmael Kalsakau, Attorney-General and Mr Frederick Gilu of SLO
for the Applicants
Mr Edward Nalyal for the Respondent
Mr John William Timakata for the Second Respondent Republic



Date of hearing: 3 September 2011
Date of judgment: 6 September 2011

JUDGMENT

INTRODUCTION

The present Constitutional Case No.07A of 2011, was initially filed on 30 August 2011 as an application for an order that the Respondent Speaker of Parliament be punished for contempt. After discussions with counsel for both the Applicants and the First Respondent Speaker and the Court, the application to punish for contempt has been withdrawn by the Attorney-General.

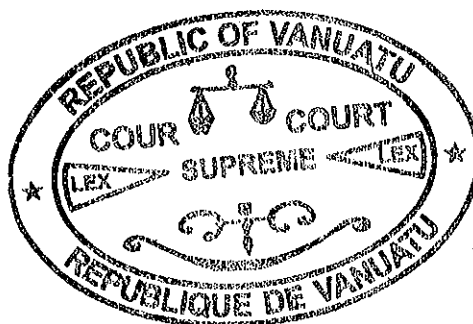
On 1st September 2011, the Applicants through the learned Attorney-General, filed a Constitutional Application which was amended on 2 occasions.

APPLICATION: RELIEF SOUGHT AND CONTENTIONS

The Constitutional Application (as further amended) seeks for the following orders:

1. That the ruling of the First Respondent on 30 August 2011 to the effect that the motion lodged to the effect that the motion lodged by the Applicants Hon. Moana Carcasses Kalosil and Hon. George Andre Wells on 25 of August 2011 to challenge the First Respondent's ruling of 24 August 2011 ruling, inter alia, that the Motion lodged by the Honourable Willie and the Honourable Toara Daniel dated 16 August 2011 was not in order, to be null and void and of no effect.
2. That Parliament meet forthwith to debate and vote upon the motion lodged by the Applicants Honourable Moana Carcasses Kalosil and the Honourable George Andre Wells dated the 25 August 2011.
3. Costs.

The following contentions are advanced on behalf of the Applicants:



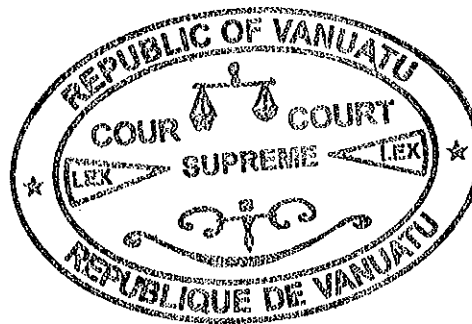
1. The Applicants contend that upon the lodgment of the motion of the Applicants Honourable Moana Carcasses Kalosil and Honourable George Andre Wells dated the 25 August 2011 and the Clerk of Parliament by return distributing the same to the Members of Parliament, the First Respondent was not competent to dispose of the said motion in the sitting of Tuesday the 30 August 2011 otherwise than in accordance with Article 21(3) of the Constitution.
2. The Applicants contend also that in so ruling against the Applicants, the First Respondent rendered finality to the said Motion in a manner contrary to Article 21(3) of the Constitution.
3. The Applicants further contend that the First Respondent's ruling is inconsistent with Article 22(2) of the Constitution.
4. The Applicants finally contend that the First Respondent's ruling covered by the preceding contentions amount to a breach of Article 21(3) of the Constitution in relation to them by preventing Parliament from debating and voting upon the said Motion.

RESPONSES AND CONTENTIONS

Mr Edward Nalyal filed a response to the further amended Constitutional Application on behalf of the First Respondent Speaker on 2nd September 2011.

It is contended by the First Respondent Speaker that:

- (a) He agrees that he ruled that the Applicant's (Moana Carcasses Kalosil and George Wells) motion was not in order because that motion:
 - (i) did not comply with Standing Orders 23, when the motion stated at paragraph 4 on page 4 that "the motion... may be debated on any day and at any time, within a sitting of Parliament", when Standing Order 23 states that motions are to be debated from 4-5pm on Tuesdays and Thursdays.
 - (ii) was an attempt to suspend the Standing Orders, contrary to Standing Order 45, which set out the proper process for suspending the Standing Orders.



- (b) He says he explained to the Members of Parliament that Parliament will continue on 8 September 2011 to debate the Bill for the supplementary Appropriation, and the Applicants to retable their motion for debate also on 8 September 2011.

The First Respondent also says that he disagrees with contention 1 of the Applicants. He says his actions are for the purpose of upholding the Standing Orders of Parliament' and so he says he has not breached Article 21(3) of the Constitution.

The First Respondent further says that he disagrees with contention 2 of the Applicants and he denies he has breached Article 22(2) of the Constitution.

The First Respondent says he denies contention 3 of the Applicants and repeats that his actions are for the purpose of upholding the Standing Orders of Parliament and he has not breached Article 21(3) of the Constitution.

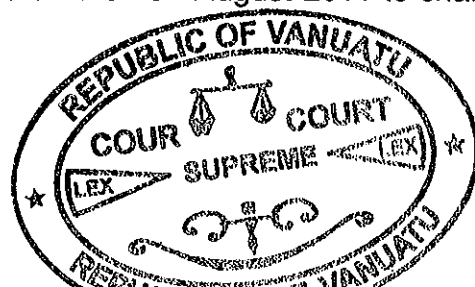
The First Respondent finally contends that the matters complained of are matters concerning the exclusive internal functioning of Parliament, and the Supreme Court has no jurisdiction to interfere in, having regard to the legal principle of separation of powers.

Mr John William Timakata filed a response to the Further, Further Amended Constitutional Application and says as follows on behalf of the Second Respondent (the Republic of Vanuatu):

1. All assertions made by the Applicants in this Constitutional Application as to the breach of Article 21(3) and Article 22(2) of the Constitution, are assertions made specifically against the First Respondent Speaker.
2. The Second Respondent, Republic of Vanuatu will abide by and comply with any Order/relief the Supreme Court will make.

ISSUE

The issue before the Court is whether the ruling of the First Respondent Speaker on 30th of August 2011 that the motion registered on the 25th August 2011 to challenge



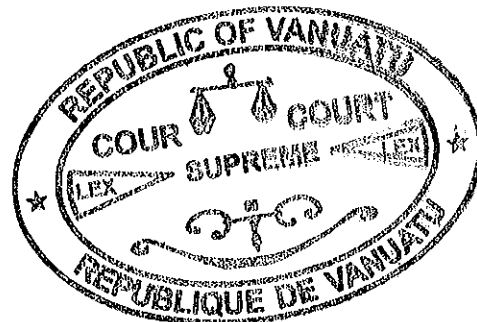
his ruling made on 24 August 2011 amount to a breach of the provisions of the Constitution?

The Applicants file various sworn statements in support of the Constitutional Application (as further amended). The First Respondent Speaker filed sworn statement in support of his response explaining his positions. The Clerk of Parliament files sworn statement attaching the Minutes of Parliament on the relevant sittings. The facts of the present case are not in dispute. Counsel for the Applicants and counsel for the First and Second Respondents agreed that the facts of this case are not in dispute.

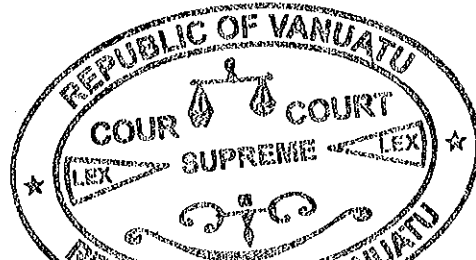
BACKGROUND FACTS

The background events leading up to the present case are summarized in this way:

1. On 23 August 2011, the Supreme Court heard Constitutional Case No.07 of 2011 and issued its judgment on the same date stating that the ruling by the Speaker of Parliament to close the sixth Extraordinary Session of Parliament on 19 August 2011 is in breach of Article 21 of the Constitution and directed that Parliament shall convene forthwith to continue and complete its business.
2. The businesses before Parliament for the Sixth Extraordinary Session of Parliament were:
 - Bill for the Supplementary Appropriation (2011) Act No. of 2011;
 - Bill for the Import Duties (Amendment) [Consolidation] Act No. of 2011;
 - Bill for the Rome Statute of the International Crime Court (Ratification) Act No. 2011; and
 - The motion to remove the Speaker of Parliament and elect a new Speaker of Parliament.
3. The motion to remove the First Respondent as Speaker was lodged by the Honourable Willie Lop and the Honourable Toara Daniel on the 16th of August 2011, was registered as motion No.3 and was distributed to by the Clerk of Parliament to the Members of Parliament in Chambers on the 19th August 2011.



4. At the sitting commencing at 8.30 hours on 24 August 2011, the First Respondent adjourned parliament to 14.00 hours on 24 August 2011. Parliament did not deal with its businesses.
5. At the sitting commencing at 14.30 hours on 24 August 2011, which was quorate, the First Respondent instead of allowing Parliament to deal and decide on the business before Parliament for the Sixth Extraordinary Session, the First Respondent Speaker made ruling:
 - (a) That the bills numbered 1-3 on the itemized agenda had not matured therefore Parliament could not debate them, and specifically;
 - (i) That the Bill for the Import Duties (Amendment) [Consolidation] Act No. of 2011 and the Bill for the Rome Statute of the International Crime Court (Ratification) Act No. 2011 would mature on 26 August 2011;
 - (ii) That the Bill for the Supplementary Appropriation (2011) Act No. of 2011 would mature on 8 September 2011; and
 - (b) The motion that was on the itemized agenda was not in order, and specifically;
 - (i) That there was a double motion because Honourable Ralph Regenvanu, MP had also deposited a written motion in addition to Motion No.3 of 2011, and this did not comply with the Standing Orders and so was not in order despite the motion being an itemized matter on the agenda.
6. Before closing the sitting which commenced at 14.30 hours on 24 August 2011, the Respondent adjourned the sitting to Friday 26 August 2011 at 08.30 hours.
7. On Thursday 25 August 2011, the Applicants Hon. Moana Kalosil Carcasses, MP for Port-Vila and Hon. George Andre Wells, MP for Luganville lodged a written Motion with the Clerk of Parliament to challenge the First Respondent's ruling made on 24 August 2011 (as referred to in paragraph 5 of the background facts above) and to determine the manner in which parliament will proceed with its business in its Sixth Extraordinary Session for 2011.
8. On Friday 26 August 2011 the Clerk of Parliament distributed copies of the motion to challenge the ruling of the First Respondent Speaker dated 25



- August and which was registered again as Motion No.3 to Members of Parliament inclusive of all the Applicants inside the Chambers of Parliament.
9. On Monday 29 August 2011, Parliament was convened and continued with its business as itemized in the agenda. In that same afternoon, at the end of the said sitting of Parliament, the First Respondent adjourned the sitting to Tuesday 30 August 2011 at 16.00 hours.
 10. At the sitting commencing at 16.00 hours on 30 August 2011, the First Respondent ruled to the effect that the motions lodged by the Applicants as follows were not in order:
 - (i) Motion dated 16 August 2011 lodged by the Applicants Hon. Willie Lop and Hon. Toara Daniel, registered as Motion No.3 of 2011, and distributed by the Clerk to all Members of Parliament on the 19th and 26th of August 2011;
 - (ii) Motion dated 25 August 2011 lodged by Hon. Moana Carcasses Kalosil and Hon. George Andre Wells, registered as Motion No.3 of 2011 and distributed by the Clerk to all Members of Parliament on the 26th of August 2011.
 11. The First Respondent then adjourned the Session to 08.30 hours on 8 September 2011 to debate and vote upon the Bill for the Supplementary Appropriation (2011) Act No. of 2011 and asked the Applicants to resubmit their motions.

The Applicants, then, apply to the Supreme Court to challenge the ruling of Speaker of 30 August 2011 in respect to their motions.

THE LAW

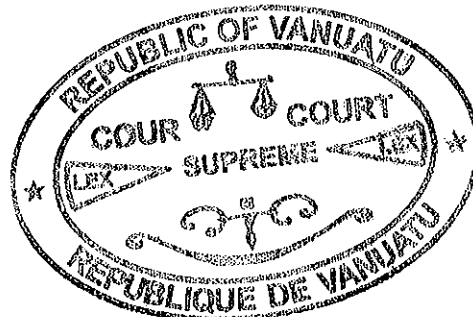
Below are the relevant provisions of the Constitution and case law authorities:

Article 2 provides:-

"2. CONSTITUTION SUPREME LAW

The Constitution is the supreme law of the Republic of Vanuatu."

...



Article 15 provides:-

"15. PARLIAMENT

The legislature shall consist of a single chamber which shall be known as Parliament."

Article 16 provides:-

"16. POWERS TO MAKE LAWS

- (1) *Parliament may make laws for the peace, order and good government of Vanuatu.*
 - (2) *Parliament shall make laws by passing bills introduced either by one or more members or by the Prime Minister or a Minister.*
-"

Article 21 provides:-

"21. PROCEDURE OF PARLIAMENT

- (1) *Parliament shall meet twice a year in ordinary session.*
- (2) *Parliament may meet in extraordinary session at the request of the majority of its members, the Speaker or the Prime Minister.*
- (3) *Unless otherwise provided in the Constitution, Parliament shall make its decisions by public vote by a simple majority of the members voting.*
- (4) *Unless otherwise provided in the Constitution, the quorum shall be two-thirds of the members of Parliament. If there is no such quorum at the first sitting in any session Parliament shall meet 3 days later, and a simple majority of members shall then constitute a quorum.*
- (5) *Parliament shall make its own rules of procedure."*

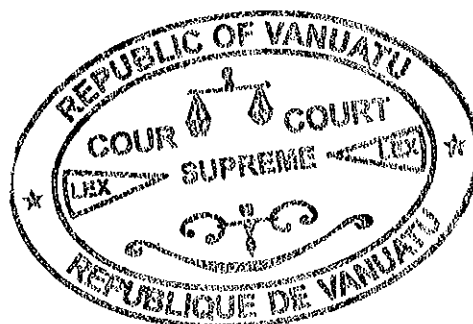
"SPEAKER

22.(1)...

- (2) *The Speaker shall preside at sittings of Parliament and shall be responsible for maintaining order.*

..."

Article 39 provides:-



"39. EXECUTIVE POWER

(1) *The executive power of the people of the Republic of Vanuatu is vested in the Prime Minister and Council of Ministers and shall be exercised as provided by the Constitution or a law."*

"40. COUNCIL OF MINISTERS

(1) *There shall be a Council of Ministers which shall consist of the Prime Minister and other Ministers."*

"43. COLLECTIVE RESPONSIBILITY OF MINISTERS AND VOTES OF NO CONFIDENCE

(1) *The Council of Ministers shall be collectively responsible to Parliament.*

(2) *Parliament may pass a motion of no confidence in the Prime Minister. At least 1 week's notice of such a motion shall be given to the Speaker and the motion must be signed by one-sixth of the members of Parliament. If it is supported by an absolute majority of the members of Parliament, the Prime Minister and other Ministers shall cease to hold office forthwith but shall continue to exercise their functions until a new Prime Minister is elected."*

"47. THE JUDICIARY

(1) *The administration of justice is vested in the Judiciary, who are subject only to the Constitution and the law. The function of the judiciary is to resolve proceedings according to law."*

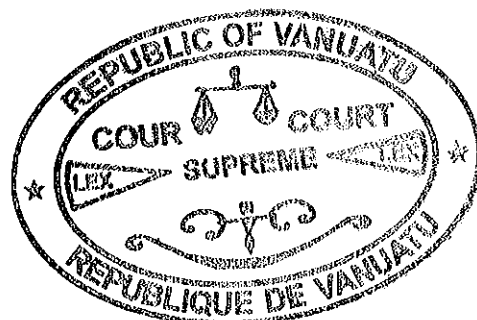
Article 49 provides:-

"49. THE SUPREME COURT

(1) *The Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings, and such other jurisdiction and powers as may be conferred on it by the Constitution or by law.*

..."

Article 53 provides:-



"53. APPLICATION TO SUPREME COURT REGARDING INFRINGEMENTS OF CONSTITUTION

- (1) *Anyone who considers that a provision of the Constitution has been infringed in relation to him may, without prejudice to any other legal remedy available to him, apply to the Supreme Court for redress.*
- (2) *The Supreme Court has jurisdiction to determine the matter and to make such order as it considers appropriate to enforce the provisions of the Constitution.*

..."

The following Court of Appeal Decisions are referred to in the present case:

- **Tari v. Natapei** (2001) VUCA 18; Civil Appeal Case No.11 of 2011.
- **Attorney-General v. Jimmy** [1996] VUCA 1; Civil Appeal Case No.07 of 1996.

APPLICATION OF LAW

I have listened and considered the submissions of the learned Attorney-General on behalf of the Applicants and submissions of counsel for First Respondent Speaker and submissions made on behalf of the Second Respondent Republic and I thank all counsel for their assistance.

It is submitted on behalf of the Applicants that the First Respondent Speaker's ruling that the motion to challenge his decision of 24 August 2011 was not in order (decision was that the motion to remove him as Speaker of Parliament was not in order), the First Respondent gave finality on the motion before Parliament.

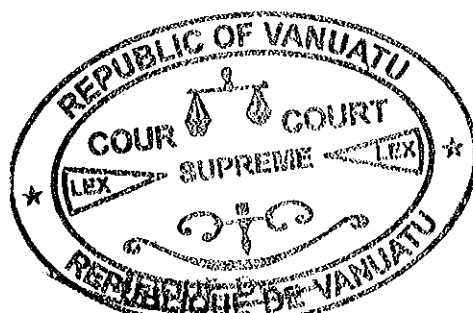
The undisputed facts before the Court reflect that submission. During the course of submissions, Mr Nalyal accepted on behalf of the First Respondent Speaker that on 16 August 2011, Hon. Willie Lop and Hon. Toara Daniel lodged a Motion to remove the First Respondent as Speaker of Parliament and to elect a new Speaker. It was registered as motion 3 and was distributed to the Members of Parliament by the Clerk of Parliament on 19 August 2011. The First Respondent at paragraph 8 of his sworn statement referred to it as "another motion" apart from the motion deposited by



Hon. Ralph Regenvanu on 12 August 2011. On Hon. Regenvanu's Motion, the First Respondent Speaker wrote a letter to him on 12 August 2011 and advised Hon. Regenvanu that his Motion did not comply with relevant Standing Orders. That was the end of that motion. It is a fact that the First Respondent accepted the Applicants' motion lodged on 16 August 2011. That motion was one of the items of the agenda of the Sixth Extraordinary Session of Parliament upon which the Supreme Court in its judgment of 23 August 2011 directed the Speaker to convene Parliament and to allow Parliament to debate and deal with Parliament business including the motion. It is a fact that such a Motion of 16 August 2011 was to remove the First Respondent Speaker. It is also a fact that on 24 August 2011, instead of allowing Parliament to deal with that motion, the First Respondent dealt with the motion himself by making a ruling that the motion was not in order. It is a fact that on 24 August 2011, the First Respondent used a defunct motion (Regenvanu's defunct Motion) to render the Motion of 16 August 2011 to its finality without Parliament. It is finally a fact that the First Respondent Speaker, on 30 August 2011 made a ruling on the Applicants' motion of 25 August 2011 putting an end to the motion to challenge ^{His} ~~the~~ ruling by preventing Parliament to deal with it.

On the undisputed facts before the Court, the Court accepts the submissions of the learned Attorney-General that in ruling that the Motion to challenge his decision of 24 August 2011 was not in order (decision was that the motion to remove him as Speaker of Parliament was not in order), the First Respondent gave finality on the Motion before Parliament.

It is a fact that the Sixth Extraordinary Session of Parliament still continues. However, a sitting has been concluded wherein the decision of the First Respondent has rendered finality to the Applicants' motion and in the circumstance of this case, there is no further avenue within the constitutionally required law-making process of Parliament to continue with the Applicants' motion otherwise than initiating the motion de novo.



In the circumstance of the present case, I accept the learned Attorney-General submissions that Article 21(3) of the Constitution had been infringed by the ruling of the Speaker made on the 30th of August 2011. The first Respondent Speaker, by giving finality on the motions before Parliament, without giving the opportunity to the Applicants and other Members of Parliament to exercise their rights to vote on the motion, had acted in a manner contrary to Article 21(3) of the Constitution.

It is also noted and accepted that the Applicants have exhausted the avenues in challenging the decision of the First Respondent Speaker.

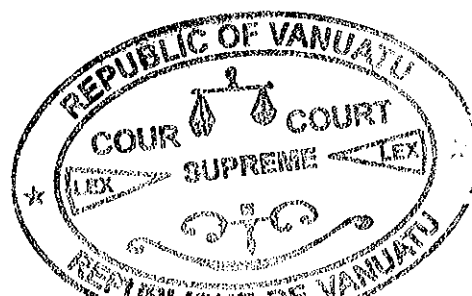
It is accepted that once the Speaker had accepted the motion (motion to remove him as Speaker of Parliament) as part of the business for Parliament to debate upon, it is not open to the Speaker to dispose of the motion the way he did but only pursuant to Article 21(3) of the Constitution. As a result, the ruling of the First Respondent Speaker is contrary to Article 21(3) of the Constitution and is thus void.

The First Respondent relies on Article 22(2) of the Constitution which provides for the duties of the First Respondent as Speaker of Parliament namely:

"The Speaker shall preside at sittings of Parliament and shall be responsible for maintaining order."

However, Article 22 could not be read in isolation. It must be read together with the provision of Article 21(3) of the Constitution. To illustrate the point, it is for the Speaker to preside over the debate of the motion while Parliament vote on the motion and the Speaker must allow Parliament to vote on the motion.

The Court further accepts the submissions of the Learned Attorney-General that there are no provisions within the Constitution that give the First Respondent Speaker the sole prerogative to make a ruling on a matter that was initially accepted to be tabled before Parliament for debate. The least possible circumstance in the application of Article 22(2) in the circumstance of this case would be in the course of



applying Article 21(3). Because to do otherwise would be to read and apply Article 22(2) in isolation which would be an absurdity.

Further, the First Respondent Speaker cannot be permitted to construe the Standing Orders of Parliament so as to import into Article 22(2) more than what the framers of the Constitution intended by the clear and unambiguous expressions of the said Article, as this would itself tantamount to a breach of Article 22(2). Furthermore, if the First Respondent is permitted to do so, this construction will arm the Speaker of Parliament with the means by which one person dictates the course of the business of Parliament by other means than that envisaged by Article 21(3) of the Constitution.

Finally, it is accepted that the application of the powers of the Speaker within the Standing Orders of Parliament must be applied in conformity with the provisions of the Constitution.

In this circumstance, the motions of 16 August and 25 August 2011 are matters that are before Parliament to debate and vote on pursuant to Article 21(3) of the Constitution.

In the present case, the Court has rejected all the submissions made on behalf of the First Respondent Speaker. The Court answers to the issue posed in this case in the affirmative by relying on the cases of: **Tari v. Natapei** (2001) VUCA 18; Civil Appeal Case No.11 of 2011 and **Attorney-General v. Jimmy** [1996] VUCA 1; Civil Appeal Case No.07 of 1996.

On the basis of the above findings and considerations, the Court makes the following Orders:

ORDERS

1. THAT, the ruling of the First Respondent on 30 August 2011 to the effect that the motion lodged by the Applicants Hon. Moana Carcasses Kalosil and Hon. George Andre Wells on the 25th of August 2011 to challenge the First

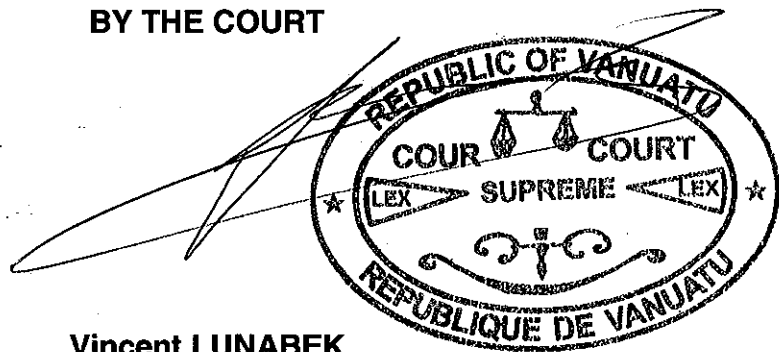


Respondent's ruling of 24 August 2011, inter alia, that the Motion lodged by the Honourable Willie Lop and the Honourable Toara Daniel dated the 16th August 2011, was not in order, is null and void and of no effect.

2. THAT, Parliament meet forthwith to debate and vote upon the Motion lodged by the Applicants Honourable Moana Carcasses Kalosil and the Honourable George Andre Wells dated the 25th August 2011.
3. The Applicants and the Second Respondent are entitled to their costs against the First Respondent Speaker.
4. Such costs are determined in Vatu 250,000 for the Applicants and Vatu 100,000 for the Second Respondent totaling VT350,000.
5. Such costs of VT350,000 shall be paid by the First Respondent Speaker personally by 16 September 2011.

DATED at Port-Vila this 6th day of September 2011

BY THE COURT



**Vincent LUNABEK
Chief Justice**