

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

Election Petition Case No. 02 of 2012

BETWEEN: LORIN SOLOMON

First Petitioner

AND: MALIU ARSEN

Second Petitioner

AND: TAVUE LANGI LANGI

Third Petitioner

**AND: THE ELECTORAL
COMMISSION**

First Respondent

AND: SAMSON SAMSEN

Second Respondent

AND: MARCELLINO PIPITE

Third Respondent

AND: JOHN LUM

Fourth Respondent

AND: ARNOLD THOMAS PRASAD

Fifth Respondent

AND: ALFRED MAOH

Sixth Respondent

AND: HOSEA NEVU

Seventh Respondent

AND: RIALUTH SERGE VOHOR

Eighth Respondent



Coram: Mr. Justice Oliver A. Saksak

Counsel: No appearance by Mr. Colin Leo for Petitioners
Mr. Tom Loughman for First Respondent
Mr. Saling Stephens for Second Respondent
Mr. Wilson lauma, Agent for Mr. T. Kapapa for Third Respondent
Mr. Kiel Loughman for Eighth Respondent
Seventh Respondent in person
No appearances by Fourth, Fifth and Sixth Respondents

Date of Hearing: 15th May 2013

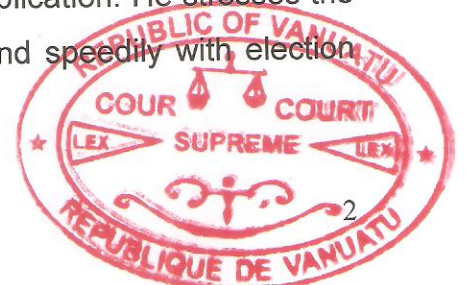
JUDGMENT

1. By Orders issued on 8th April 2013 this case was fixed for trial beginning at 0900 hours this morning. It was fixed for a two days hearing to Thursday 16th May. The Court Ordered the Parties to pay trial fees of VT15.000 from the Petitioners and VT15.000 by the active respondents. Mr. Colin Leo was present on 8th April 2013.
2. This morning when the matter is called Mr. Leo makes no appearance. He has not provided any explanation to the Court or Counsel as to why he is not available for trial at the time fixed by the Court in his presence and with his agreement.
3. As a result of Mr. Leo's non appearance, Mr. Stephens applies orally for Orders to strike out the petition. Counsel bases his application on Rule 12.9 (2)(b) of the Civil Procedure Rules No. 49 of 2002 (the Rules). It reads –

“2. If a Claimant does not attend when the trial starts:

(b) The Court may dismiss the Claimant's claims and give judgment for the defendant.....”

Counsel relies on the case of Reme Vatambe v. Principal Electoral Officer and Others [2002] VUSC 67 in support of his oral application. He stresses the need to maintain the principle of dealing urgently and speedily with election petition cases.



4. Mr. lauma supports the oral application. He draws the Court's attention to Rule 1.3 of the Election Petitions Rules No. 29 of 2003 which states –

"If these Rules do not make provision for a matter relating to an electoral dispute proceeding, the Civil Procedure Rules apply to that matter."

Counsel further refers to Rule 1.4 which states –

"The Supreme Court must give effect to the overriding objective, as set out in the Civil Procedure Rules, when it:

- (a) Does any act under these Rules; or*
- (b) Interprets these Rules."*

5. Mr. Tom Loughman supports the application made by Mr. Stephens for reason that Mr. Leo has not provided any clear reasons why he is not in Court this morning to proceed with trial.
6. Mr. Kiel Loughman supports the application to dismiss the petition of the petitioners. He argues that election petitions involve national interest and therefore they must be given urgency and priority over other matters. He argues that when the Petitioners and their Counsel are not present today to proceed with trial as fixed, the purpose as stated in Vatambe Case is defeated. He therefore seeks costs.
7. Mr. Stephens further submits that costs should be awarded to every respondents present in Court today.
8. I accept the application by Mr. Stephens as supported fully by Counsel for the other respondents present on their submissions. But there are other reasons also as follows:-

- (a) The Petitioners have not paid their trial fees as ordered on 8th April 2013.



- (b) They have filed Notices of Discontinuance on 7th May 2013 to discontinue the proceeding against Samson Samsen (Second Respondent) and Marcellino Pipite (Third Respondent) but not against the remaining respondents. It makes little or no sense at all in doing so and leaving the action against the rest of the respondents. It is either all or none.
- (c) The amended petition does not name Serge Rialuth Vohor as Eighth Respondent and it does not disclose any cause of action against him.
9. I accept the submissions that election petition cases must be dealt with urgently and speedily in accordance with the overriding objectives set out in Rule 1.2 of the Civil Procedure Rules. I further accept that Rule 1.3 of the Election Petitions Rules permit this Court to apply the Civil Procedure Rules.
10. Clearly I am satisfied that the petitioners have failed to attend trial on the date and time as fixed by Order of 8th April 2013. They have failed to pay their trial fees whereas the Third Respondent has paid VT5.000 and the Seventh Respondent had paid VT2.143. Clearly by their failure and/or omissions the Petitioners have displayed their hesitancy and their lack of seriousness to prosecute their petition successfully.
11. For those reasons and to ensure further costs are not incurred unnecessarily on a petition that is so uncertain as to its success by the petitioners, the Court must maintain, and adhere and apply the principle set out in the Vatambe Case to allow the application and the strike out the petition of the petitioners in its entirety with costs.
12. The final Orders therefore are –
- (a) The Application for a Strike Out is allowed.
- (b) Election Petitioner Case No. 2 of 2012 is hereby dismissed in its entirety.
- (c) The Court hereby confirms and declare that Samson Samsen, Marcellino Pipite, Serge Rialuth Vohor, John Lum, Arnold Prasad, Alfred Mach and



Hosea Nevu are validly elected as Members of Parliament representing the Constituency of Santo.

(d) The Petitioners be required to pay the costs of and incidental to the petition to the First, Second, Third, Seventh and Eighth Respondents. Costs are awarded on the standard basis as agreed or be taxed by the Court.

DATED at Luganville this 15th day of May 2013.

BY THE COURT


OLIVER A.SAKSAK

Judge

