

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

CONSTITUTIONAL CASE NO.10 OF 2014

BETWEEN: HON. MOANA KALOSIL CARCASSES

First Applicant

HON. ARNOLD PRASAD

Second Applicant

HON. JEAN YVES CHABOD

Third Applicant

HON. TONY NARI

Fourth Applicant

HON. PASCAL IAUKO

Fifth Applicant

HON. HOSEA NEVU

Sixth Applicant

HON. JOHN AMOS VACHER

Seventh Applicant

HON. THOMAS LAKEN

Eight Applicant

HON. SAMSON SAMSEN

Ninth Applicant

HON. MARCELLINO PIPITE

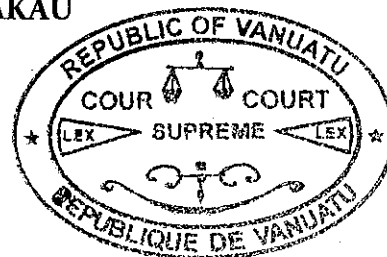
Tenth Applicant

HON. PAUL TELUKLUK

Eleventh Applicant

HON. STEVEN KALSAKAU

Twelfth Applicant



HON. KALFAU MOLI

Thirteenth Applicant

HON. TONY WRIGHT

Fourteenth Applicant

HON. RIALUTH SERGE VOHOR

Fifteenth Applicant

HON. JONAS JAMES

Sixteenth Applicant

HON. PHILIP BOEDORO
SPEAKER OF PARLIAMENT

First Respondent

REPUBLIC OF VANUATU

Second Respondent

Coram: Justice Oliver Saksak

Mr Avock Godden for First - Eighth Applicants

Mr. Robin T. Kapapa for Ninth – Twelveth Applicants

Mr. Colin B. Leo for Thirteenth – Sixteenth Applicants

Mr. Jack I. Kilu and Mr Kiel Loughman for First Respondent

Mr. Frederick Gilu and Mr Kent T. Tari for Second Respondent

Date of Hearing: 1 December 2014

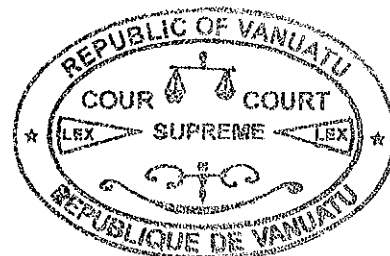
Date of Judgment: 2 December 2014

JUDGMENT

Back ground Facts

1. The relevant back ground facts are –

- (a) On 21 November 2014 two motions were delivered to the Speaker of Parliament (first Respondent):-



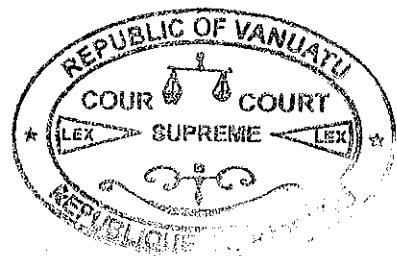
- (i) The Motion to Suspend (Motion No.11 of 2014) by the Hon. Joe Natuman (The Prime Minister) Seconded by the Hon. Ham Lini Vanuaroroa.
 - (ii) The Motion of No-Confidence (Motion No.12 of 2014) by the First Applicant on behalf of the 16 members of Parliament named in this Petition (the Petitioners)
2. On 24 November 2014 the First Respondent wrote to the First Applicant acknowledging receipt of Motion No.12 and confirming that it was proper and in accord with Article 43(2) of the Constitution, and that it was to be debated at 3.00 pm on Friday 28 November 2014.
 3. On 25 November 2014 Parliament sat in its ordinary session. The First Respondent introduced Motion No.11.
 4. Parliament voted to pass Motion No.11 with 27 voting in favour, 22 voting against and 1 abstention. As a result, the Petitioners have been suspended from Parliament. The suspension will be lifted only after the conclusion of the First Ordinary Session of Parliament in 2015.

Basis

5. The Petitioners filed their petition on an urgent basis under Articles 5(1)(d), 5(2)(a), 5(2)(b), 6(1), 6(2), 16, 17, 21, 28, 43(2), 47, 53(1) and 53(2) of the Constitution.

Complaints

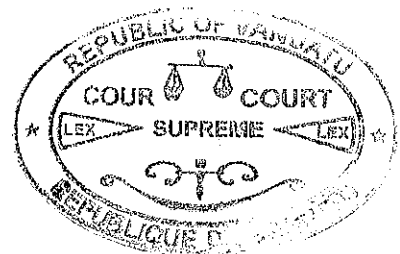
6. The Petitioners complain that –
 - (a) As no dates have been set for the start or end of the First Ordinary Session of Parliament in 2015, therefore it is not certain how long their suspension will be for.



- (b) Motion No.11 of 2014 was made in breach of Standing Order 34 in that it contained “argument, inference, imputation and/or offensive and scandalous expressions” and ought to have been ruled out by the First Respondent.
- (c) Motion No.11 of 2014 infringed constitutional rights of the Petitioner in Articles 5(1)(d), 5(2)(a) and (b), 16, 17, 21, 28, 43(2) and 47(1) of the Constitution and that it should be declared invalid, void and of no legal effect.

Reliefs Sought

- 7. The petitioners sought urgent interim relief pursuant to Articles 6(2) and 53(2) of the Constitution for –
 - (a) An Order (mandamus) that, pending the final hearing and determination of this proceeding, the petitioners shall be permitted to attend Parliament and its precincts, and to participate in and exercise their full rights and Members of Parliament, and
 - (b) A declaration that the Petitioners have a constitutional right under Article 43(2) to vote on the Motion of No Confidence on 28 November 2014.
- 7.1 This part of relief was heard on 28 November 2014 at 11:30 a.m. The petitioners abandoned their application on the basis that the First Respondent had moved the debate of Motion No.12 of 2014 to Tuesday 2 December 2014 at 4:00 p.m.
- 8. The Petitioners seek the following final reliefs –
 - (a) A declaration that their constitutional rights under Articles 5(1)(d), 5(2)(a) and (b), 16, 17, 21, 28 43(2) and 47 of the Constitution have been infringed.
 - (b) A declaration that Motion No.11 of 2014 amounts to a breach of their constitutional rights and is therefore invalid, void and of no effect.



- (c) A declaration that the decision and/or ruling made by Parliament on 25 November 2014 to suspend the Petitioners is invalid, void and of no effect.
- (d) An order (certiorari) quashing the decision to suspend and exclude the Petitioners from Parliament; and
- (e) An Order that the First and/or Second Respondent pays the Petitioners' costs of and incidental to the action.

Evidence In Support

9. The Petitioners filed evidence in support of their petition contained in the sworn statements of –

- (a) Moana Kalosil Carcasses;
- (b) Rialuth Serge Vohor (as to urgency);
- (c) Jonas James;
- (d) Tony Wright;
- (e) Kalfau Moli;
- (f) Avock Godden (as to urgency);
- (g) Marcellino Pitite; and
- (h) Paul Telukluk.

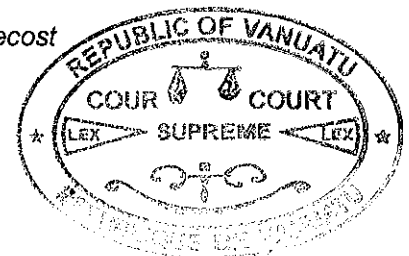
10. Except for the evidence of Marcellino Pipite and Paul Telukluk which merely confirms the sworn statements of MP Moana Kalosil Carcasses and MP Rialuth Serge Vohor, all the remaining sworn statements annex copies of Motion No.11 of 2014 and Motion No.12 of 2014. In the First Applicant's sworn statements the motion are annexed as Annexures "MK1" and "MK2". I set out the texts of the Motions in full –

10.1 "MOTION NO.11 of 2014"

MOVER: Honourable Joe NATUMAN, MP for Tanna

SECONDER: Honourable Ham Lini VANUAROROA, MP for Pentecost

SUBJECT: DISCIPLINE OF



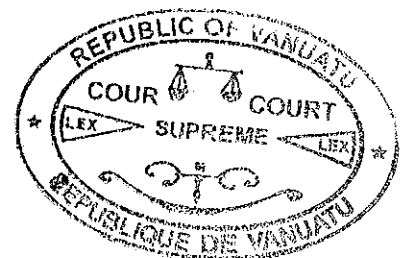
1. The Hon. Moana Carcasses Kalosil,
2. The Hon. Serge Vohor,
3. The Hon. Arnold Prasad,
4. The Hon. Tony Nari,
5. The Hon. Pascal Iauko,
6. The Hon. Hosea Nevu,
7. The Hon. John Amos Vacher,
8. The Hon. Tony Wright,
9. The Hon. Samson Samsen,
10. The Hon. Marcelino Pipite,
11. The Hon. Paul Telukluk,
12. The Hon. Steven Kalsakau,
13. The Hon. Jonas James,
14. The Hon. Thomas Laken,
15. The Hon. Kalfau Moli,
16. The Hon. Jean Yves Chapod.

WHEREAS:

- A. The following facts have been discovered and verified by the Police:
- a. That on the 29th October 2014, the Hon. Moana Carcasses Kalosil deposited a Westpac Cheque for an amount of 35 million vatu into his personal account at the ANZ Bank.
 - b. That on the 30th and 31st of October 2014 the following amounts were transferred from Hon. Moana Carcasses Kalosil's ANZ Bank account upon his instruction to the following accounts of the following MP's:
 - 1,000,000 vatu to the ANZ Bank account of the Hon. Serge Vohor,
 - 1,000,000 vatu to the ANZ Bank account of the Hon. Arnold Prasad,
 - 1,000,000 vatu to the ANZ Bank account of the Hon. Pascal Iauko,
 - 1,000,000 vatu to the ANZ Bank account of the Hon. Hosea Nevu,
 - 1,000,000 vatu to the ANZ Bank account of the Hon. John Amos Vacher,
 - 1,000,000 vatu to the ANZ Bank account of the Hon. Tony Wright,
 - 1,000,000 vatu to the ANZ Bank account of the Hon. Samson Samsen,
 - 1,000,000 vatu to the ANZ Bank account of the Hon. Marcelino Pipite,
 - 1,000,000 vatu to the ANZ Bank account of the Hon. Paul Telukluk,
 - 1,000,000 vatu to the ANZ Bank account of the Hon. Steven Kalsakau,
 - 1,000,000 vatu to the ANZ Bank account of the Hon. Jonas James,
 - 1,000,000 vatu to the ANZ Bank account of the Hon. Thomas Laken
 - 1,000,000 vatu to the ANZ Bank account of the Hon. Kalfau Moli
 - 1,000,000 vatu to the ANZ Bank account of the Hon. Jean Yves Chapod
 - 500,000 vatu to the ANZ Bank account of the Hon. Tony Nari.
- B. The Leader of the Opposition has not denied these facts, and in fact has openly stated in the media that he is offering 1,000,000 vatu to any MP of either the Opposition or the Government or the Government sides who will pledge their allegiance to him.

AND WHEREAS

- A. Chapter 10 of the Constitution establishes the Leadership Code of the Republic of Vanuatu, and states,
- In Article 66(1) that "Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to –



- (a) Place himself in apposition in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
- (b) Demean his office or position;
- (c) Allow his integrity to be called into question; or
- (d) Endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.

- In Article 66(2) that "In particular, a leader shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by sub article (1)"

- in Article 67 that "For the purposes of this Chapter, a leader means the President of the Republic, the Prime Minister and other Ministers, Members of Parliament, and such public Servants, Officers of Government agencies and other officers as may be prescribed by law".

B. The Leadership Code Act [CAP.240], a law of Vanuatu passed by this Parliament, states in Part 3 ("Breaches of Leadership Code"),

- in section 21 ("Acceptance of loans") that "A leader must not accept a loan (other than on commercial terms from a recognised lending institution and only if the leader satisfies the lending institution's usual business criteria or in accordance with the customary practice or a particular place for or during a traditional ceremony), advantage or other benefit, whether financial or otherwise, from a person".

- in section 22(1) ("Undue influence") "A leader must not exercise undue influence over, or in any other way bring pressure to bear on, a person who is: (a) another leader..... so as to influence, or attempt to influence, the person to act in a way that is:

- (c) in breach of this Code; or

- (d) Improper; or

- (e) illegal; or

- (f) against the requirements of the Act under which the person was appointed; or

- (g) contrary in any other way to the requirement of the person's office or position".

- in section 22(2) that "A leader must not influence or attempt to influence or exert pressure or threaten or abuse or interfere with persons carrying out statutory functions".

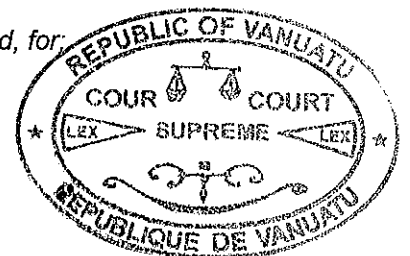
- in section 23 ("Bribery") that "A leader must not:

- (a) corruptly ask for or receive; or

- (b) agree to ask for or obtain; or

- (c) corruptly offer,

any money, property, or other benefit or advantage or any kind, for



(d) himself or herself, or

(e) another person or body,

In exchange for his or her acts or omissions as a leader being influenced in any way, either directly or indirectly".

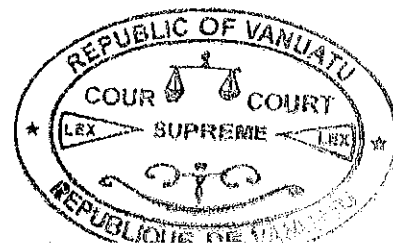
- C. The Leadership Code Act [CAP.240], also states in Part 6 ("Punishment of Leaders"),
- in section 40(1) that "A leader who is convicted of a breach of section 19, or 20, 21, 22, 23, 24, 26 or 27 is liable to -
 - (a) a fine not exceeding VT5,000,000; or
 - (b) imprisonment for a period not exceeding 10 years".

AND WHEREAS:

- A. Official complaints have been submitted to the Police by the Prime Minister and other Government MPs concerning the facts of the matter and alleging that a variety of offences have been committed, including the fact that certain Government MPs have been approached by MPs of the Opposition with offers of money to switch allegiance to the Hon. Moana Carcasses Kalosil with the intention of moving a motion against the current Prime Minister, and that Police investigations are currently being carried out into this matter.
- B. Such actions by the named MPs as "Leaders" under the provisions of the Constitution and the Leadership Code:
- (a) place them all in a position in which they have or could have a conflict of interests or in which the fair exercise of their public or official duties might be compromised;
 - (b) demean their office or position;
 - (c) allow their integrity to be called into question; and
 - (d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu, and in particular this honourable Parliament.
- C. By virtue of their actions, and by virtue of their conduct which holding the high office of Members of Parliament, these Honourable Members have brought disrepute upon Parliament, the office of the Speaker and the integrity of the institution and its members.

AND WHEREAS:

- A. Standing Order 40(4) states that "Parliament may, on a motion moved by a member, suspend any member from the service of Parliament for such period indicated in the motion. A member who is suspended shall not be admitted to Parliament or its precincts during the period of suspension"
- B. Standing Order 35(1) states that "Any Member who wishes to move a written motion shall give notice thereof by delivering to the Clerk a copy to its signed by him and by one other Member acting as seconder not less than three (3) clear days before the day on which he intends to move such motion"



NOW THEREFORE PARLIAMENT HEREBY RESOLVES:

That the Honourable Members named in this motion shall be suspended from Parliament with immediate effect, and that this suspension shall only be lifted after the conclusion of the 1st Ordinary Session of Parliament of 2015

Moved by
Honourable Joe NATUMAN, MP for Tanna

Seconded by
Honourable Ham Lini VANUAROROA, MP for Pentecost"

10.2 Motion Number 12 of 2014

Moved by: Honourable Moana Kalosil CARCASSES (MP)
Member for Port Vila

Seconded by: Honourable Serge Vohor RALIUTH
Member for Santo

PURPOSE: Move a Motion of No Confidence against the Prime Minister of the Republic of Vanuatu – the Hon. Joe NATUMAN (MP)

Pursuant to:

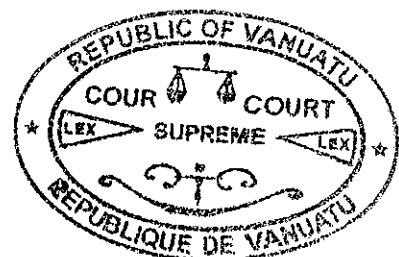
1. Article 43, paragraph 2 of the Constitution of the Republic of Vanuatu provides for a Motion of No Confidence to be tabled against the Prime Minister and other Ministers shall cease to hold office immediately but continue to act until a new Prime Minister is elected.
2. Article 41 of the Constitution and Standing Orders 8 and 9(3) of the Standing Orders of Parliament provide for the election of a new Prime Minister.

Whereas:

1. The Prime Minister is causing huge financial, economical and social harm of the country in refusing/neglecting to enforce and Court validated airport concession, thus risking to cause damages expected at more than three billions of vatu;
2. The Prime Minister intervene and has interfered in exercise of his power with the public service and constitutional institutions to favour illegal removal of the Chairman of the Public Service Commission and chairman and members of the Citizenship Commission.
3. The Prime Minister has neglect to immediately act on the e-Visa scheme in China and to investigate the allegations of misuse of such funds for individual purpose.
4. The Prime Minister has stopped the decentralized councils of Minister and thus deprived Sanma, Penama, Tafea and Malampa province the benefit of the same;
5. The Prime Minister is giving a wrong direction to the country, the direction of inactivity, favouritism and direction towards and past instead of focusing on economic sovereignty and the future.

IT IS THEREFORE DECIDED by this Motion that the function of the Honourable Joe NATUMAN as Prime Minister is terminated forthwith and the Parliament elects a new Prime Minister immediately.

Made at Port Vila on this 18th November 2014.



Hon. Moana Kalosil CARCASSES
Member for Port Vila

Ho. Serge Vohor RALIUTH
Member for Santo

Hon. Willy Jimmy TAPANGARARUA
Member for Port Vila

Hon. Paul B. TELUKLUK
Member for Malekula

Hon. Marcelino PIPITE
Member for Santo

Hon. Arnold PRASAD
Member for Santo

Hon. Tony NARI
Member for Pentecost

Hon. Silas Yatan ROUARD
Member for Tanna

Hon. Jonas James
Member for Paama

Hon. John AMOS
Member for Tongoa

Hon. Jean Yves CHABOT
Member for Port Vila

Hon. Tony WRIGHT
Member for Port Vila

Hon. Toara Daniel KALO
Member for Shepherds

Hon. Pascal Iauko HARRY
Member for Tanna

Hon. Thomas LAKEN
Member for Tanna

Hon. Jerome LUDVAUVE
Member for Malekula

Hon. Robert BOHN
Member for Epi

Hon. Christophe EMELEE
Member for Torba

Hon. Samson Samen
Member for Santo

Hon. Steven Kalsakau
Member for Efate

Hon. Hosea Nevu
Member for Santo

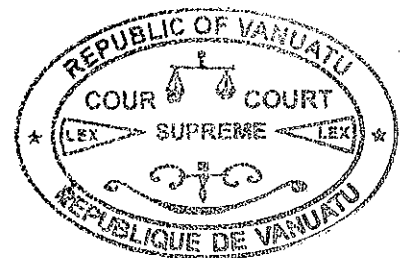
Hon. Kalfau Moli
Member for Luganville"

Relevant Constitutional and Statutory Provisions

11. The Constitution

11.1 Article 5(1)(d) states:-

"(1) The Republic of Vanuatu recognises that subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of



origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health -(d) protection of the law

11.2 Article 5(2)(a) states:-

"(2) Protection of the law shall include the following –

- (a) everyone charged with an offence shall have a fair hearing within a reasonable time, by an independent and impartial Court and be afforded a lawyer if it is a serious offence.*
- (b) everyone is presumed innocent until a Court establishes his guilt according to law,"*

11.3 Article 6(1) and (2) state:-

"(1) Anyone who considers that any of the rights guaranteed to him by the Constitution has been, is being or is likely to be infringed may, independently of any other possible legal remedy, apply to the Supreme Court to enforce that right.

(2) The Supreme Court may make such orders issue such writs and give directions, including the payment of compensation, as it considers appropriate to enforce the right."

11.4 Article 53(1) and (2) state:-

"(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 make such order as to considers appropriate to enforce the provisions of the Constitution."

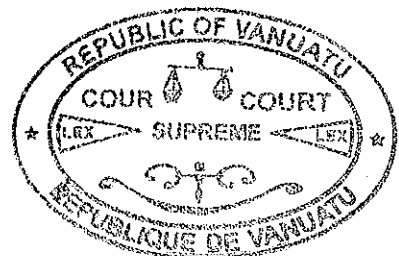
11.5 Article 43 states:-

"(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 notice 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."

11.6 Article 47(1) states:-

"(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 accordingly to law. If there is no rule of law applicable to a matter before it, a Court shall determine the matter according to substantial justice and whenever possible in conformity with custom."



11.7 Article 66 provides for conduct of leaders –

“(1) Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to –

- (a) place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or office duties might be compromised;
- (b) mean his office or position;
- (c) allow his integrity to be called into question; or
- (d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.

In particular a leader shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the Public mind as to whether he is carrying out or has carried out the duty imposed by sub article 1.”

(2) Article 67 provides definition of a leader:-

“For the purpose of this Chapter, a leader means the President of the Republic of Vanuatu, the Prime Minister, and other Ministries, Members of Parliament, and such Public Servants, Officers of Government agencies and other officers as may be prescribed by law.”

11.8 Article 68 states:-

“Parliament shall by law give effect to the principles of this Chapter.”

Leadership Code Act (LCA)

11.9 Section 21 of the LCA provides for Acceptance of Loans –

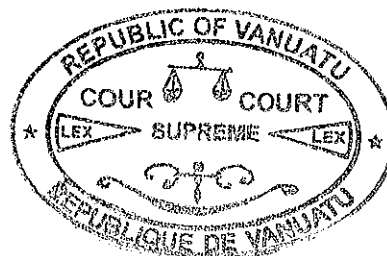
“A leader must not accept a loan (other than on commercial terms from a recognised lending institution and only if the leader satisfies the lending institution’s usual business criteria or in accordance with the customary practice of a particular place for or during a traditional ceremony), advantage or other benefit, whether financial or otherwise , from a person.”

11.10 Section 23 of the LCA provides for Bribery –

“A leader must not:

- (a) corruptly ask for or receive; or
- (b) agree to ask for or obtain; or
- (c) corruptly offer;
- (d) himself or herself, or
- (e) another person or body;

in exchange for his or her acts or omissions as a leader being influenced in any way, either directly or indirectly.”



Standing Orders

11.11 Standing Order 40 provides for Order in Parliament:-

"(1) The Speaker, after having called the attention of Parliament to the conduct of a member who persists in irrelevance or tedious repetition either in his own arguments or of the arguments used by other members in the debate, may direct him to discontinue his speech.

(2) If any Member:

- (a) persistently and wilfully obstructs the business of Parliament;
- (b) is guilty of disorderly conduct;
- (c) uses objectionable words which he refuses to withdraw;
- (d) persistently or wilfully refuses to conform to any standing Order;
- (e) persistently or wilfully disregards the authority of the Speaker;

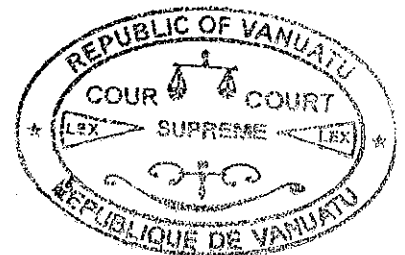
The Speaker shall order the Member to withdraw immediately from Parliament and its precincts during the remainder of that sitting.

- (3) In the case of grave disorder arising in Parliament, the Speaker may adjourn Parliament without question put or suspend any sitting for a time determined by him.
- (4) Parliament may, on a motion moved by a Member, suspend any Member from the service of Parliament for such period indicated in the motion. A member who is suspended shall not be admitted to Parliament or its precincts during the period of suspension.
- (5) Any motion presented in accordance with paragraph (4) shall be in writing and seconded and a notice of 2 clear days shall be given thereof to the Speaker."

The Issues

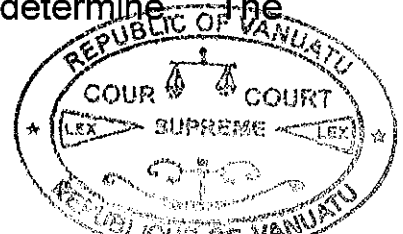
12. There are basically two primary issues namely:

- (a) Whether the passing of Motion No.11 of 2014 by Parliament infringed the petitioners' Constitutional rights under Articles 5(1)(d), 5(2)(a) and (b) 6(1) and (2), 16, 17, 21, 28, 43(2), 53(1) and (2)?
- (b) Whether the Speaker should have ruled out Motion No.11 of 2014 because it was moved in breaches of Standing Order 34 and that it infringed Constitutional rights of Petitioners under Articles 5(1)(d), 5(2)(a) and (b), 16, 17, 21, 28, 43(2) and 47(1) of the Constitution?



Discussions

13. This Constitutional Petition was filed on an urgent basis and the Court being satisfied as to its urgency abridged time required by the Constitutional Petition Rules on Friday 28 November.
14. Pursuant to directions issued on 28 November the First Respondent filed five sworn statements by the Hon. Joe Natuman, Prime Minister, Hon. Philip Boedoro, Speaker, Hon. Don Ken, Hon. Richard Mera and Floyd Mera. Of these, Mr Avock took objections to the admissibility of the statements by Hon. Don Ken, Hon. Richard Mera and Mr Floyd Mera on grounds they were irrelevant. Counsel relied on the effect of the subjudice Rule/Convention enunciated in Browning, House of Representatives, 2nd Edition 504-5 which the Court of Appeal acknowledged and referred to in the case of Attorney General v. Jimmy [1996] VUCA 1: Civil Appeal Case No.7 of 1996. I accepted that submission and ruled in favour of the objections made by Mr Avock and Mr Leo that the sworn statements of Hon. Don Ken, Hon. Richard Mera and Floyd Mera were inadmissible.
15. Mr Gilu informed the Court the Second Respondent did not file any sworn statement because Parliament was not named a party. Counsel indicated that he had merely filed responses on which he would rely if the Court granted leave that their appearance was only to assist the Court. Counsel for the Petitioners did not take issue and leave was granted.
16. Counsel did not take issue with the facts except for the date which was commonly accepted to be 21 November 2014, instead of 18 November as stated by the petitioners.
17. I turn now to consider the first issue of whether Motion No.11 of 2014 was passed in breaches of the petitioners' constitutional rights under Article 5(1)(d) "Protection of the Law" and Articles 5(2)(b) "Presumption of innocence until proven guilty in a Court of Law."
18. Counsel for the Petitioner's argued and submitted that, amongst others, the respondents have held a defacto trial and pronounced guilt on the petitioners on the basis of mere allegations and scandalous accusations which were not supported by evidence, and which only a Court of law has power to determine. The

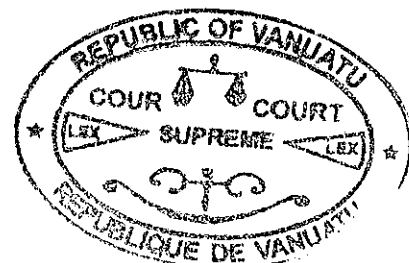


petitioners rely on the effect of the subjudice rule in Browning as referred to by the Court of Appeal in the case of AG v. Jimmy. This is their strongest submission and the Court accepts it.

19. Mr Kilu and Mr Loughman for the First Respondent however argued and submitted that the motion was not about the allegations made but that it was made to protect the integrity of Parliament as an institution. I find those submissions absurd and untenable. The decision taken to protect the integrity of Parliament could not be taken without basing it on the allegations made. Paragraph C of the Motion states:-

"By virtue of their actions, and by virtue of their conduct while holding the high office of members of Parliament, these Honourable Members have brought disrepute upon Parliament, the office of the speaker and the integrity of the institution and its members" (emphasis added)

20. In my considered view this pronouncement by the movers of the motion amounted to a conclusion of guilt pronounced on the petitioners without first being tried by a competent court of law. It is apparent that by doing so the executive arm of government under the guise of Parliament as the legislative arm of government were encroaching on the powers of the judiciary, the third arm of government. The notion of separation of powers is deeply embedded in our Constitution and must be respected and maintained at all times. This case should remind us that this notion is in danger of being eroded, thus undermining the democratic values and sovereignty that is enshrined first and foremost in Article 1 of our Constitution. The cases of The President v. Korman CAC 8 of 1998 and Tari v. Natapei [2001] VUCA 18 and Vohor v. AG [2004] VUCA 22 are clear case authorities in support of this pronouncement.
21. The Petitioners contended that their suspension by Parliament has denied them their right to take part in the passing of the laws pursuant to Article 16 and to represent their voters pursuant to Article 17 of the Constitution. The first respondent contended that there were no breaches of these Articles of the Constitution.
22. The Motion No.11 of 2014 resolved that the Petitioners "..... shall be suspended from Parliament with immediate effect, and that this suspension shall only be lifted after the conclusion of the 1st Ordinary Session of Parliament of 2015."

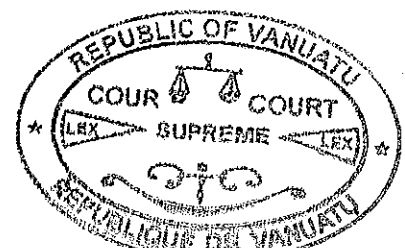


23. As a result of that resolution it would appear that the 1st Ordinary Session of Parliament would begin in March 2015 on a date to be determined by the Speaker. The actual date of its expiry is not specified. The inference is that their suspension is uncertain. As elected members of Parliament they represent their voters who are entitled to be heard in respect to the passing of laws for the peace, order and good government of Vanuatu. In that regard, it can be accepted that the petitioners' rights under Articles 16 and 17 of the Constitution will likely to be breached if their suspension is allowed to continue for an unspecified duration. That case of Vanuaroroa v. Republic [2013] VUSC 102 is the authority lending support to this view. The PNG case of Fly River [2010] PGSC3 also lends support as authority.
24. The petitioners also contend that their rights under Article 43(3) of the Constitution are likely to be infringed if their suspension continues and they are not given the opportunity to attend Parliament to debate it. The Court agrees and accepts their submissions in that regard. It is now accepted fact that while the petitioners are suspended from Parliament, the Notice of Motion No.12 of 2014 which the Speaker has confirmed is in order and scheduled for debate on Tuesday 2 December 2014 at 4:00 p.m.
25. Once the Speaker has accepted that the petitioners' motion is in order, the petitioners are entitled under Article 43(3) of the Constitution to be present in Parliament to debate on the motion. The case of Republic of Vanuatu v. Carcasses [2009] VUCA 46 is authority for this view.

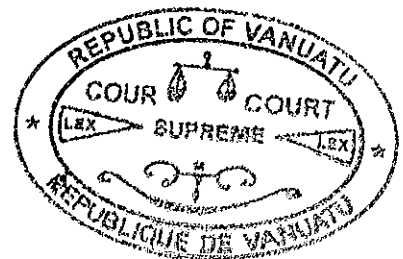
Standing Order 35(4) states:-

"When a written motion has been moved, the Speaker shall propose the question thereon to Parliament in the same terms as the motion and a debate may then take place. The mover, or in his absence the Seconder, shall be entitled to open such a debate and shall have the right of reply."

26. With their suspension, it begs to question first, who will move the written motion on 2nd December 2014 at 4:00 p.m? Secondly how will they be entitled to the debate and the right to reply? How would Standing Order 35(4) work practically in Parliament without the petitioners? There is only one possible conclusion. If the Motion of No Confidence progresses without the petitioners, their constitutional right under Article 43(3) will undoubtedly be infringed.



27. Motion No.11 of 2014 was moved pursuant to Standing Order 40(4) and 35(1). There is no issue with Standing Order 35(1). The petitioners however contend that Standing Order 40(4) does not give power to either the Speaker or Parliament as such to pass a motion to suspend the petitioners for acts or conducts alleged to be done by them outside of Parliament. The petitioners placed reliance on the Court of Appeal Case of Tari v. Natapei. Mr Kilu however urged the Court to differentiate between the power of the Speaker and the power of Parliament and submitted that Standing Order 40(4) gives power to the Parliament to suspend its members. That submission is untenable and is rejected. Standing order 40 provides for Order in Parliament. It provides powers both to the Speaker and to Parliament. Nowhere in that Standing Order does it make provision for discipline of members for conducts or actions done outside of Parliament. The case of Tari v. Natapei is clearly applicable to this case.
28. For all the foregoing reasons, the Court answers the first issue in the affirmative.
29. Now for the issue of whether the Speaker should have ruled out Motion No.11 of 2014 because –
- (a) The Motion contained arguments, inferences, imputations or were tendentious, ironical or offensive expressions; and
 - (b) The Speaker omitted to rule on the point of order raised by the First Petitioner.
30. It is an accepted fact that the First Petitioner raised a point of Order by writing a letter to the Speaker some 20 minutes earlier. The sworn statement of Leon Teter dated 30 November 2014 annexes the Minutes of Parliament meeting as "LT1". Paragraph 2 records this aspect. Once that was notified to the Speaker, Standing Order 42(1) places a mandatory obligation on the Speaker to call the attention of Parliament to any violation.



It states:-

"(1) The Speaker shall call the attention of Parliament to any violation of the Standing Order."

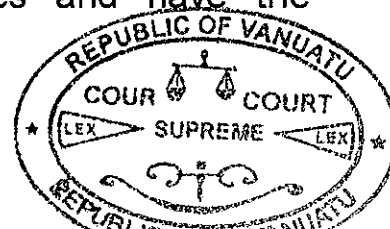
It is apparent this did not occur and it follows the rest of Standing Order 42(2), (3) and (4) were not followed. These reasons are sufficient to answer this issue in the affirmative. The Speaker's failure and/or omission to do so, amounted to an infringement of the petitioners' rights to have their point or order debated.

31. The Court is persuaded and convinced by the written submissions by Counsel for the petitioners to the extent that the Petitioners must be successful in their constitutional petition. The Court rejects the submissions of the First Respondent. The Court finds little or no assistance from the responses filed by the Second Respondent.
32. Finally Mr Loughman raised the dictum of the Court of Appeal in the most recent case of Moana Kalosil Carcasses and 19 others v. Speaker of Parliament CAC 33 of 2014 [14 November 2014]. The Court referred to the case of Amalgamated Society of Railway Servants v. Osborne [1920] AC 87 where Lord Shaw of Dunfirmline said:

".....in regard to the member of Parliament himself, he too is to be free, he is not to be the paid mandatory of any man, or organisation of men, or is he entitled to bind himself to subordinate his opinions on public questions to others, for wages or at the peril of penury loss and any contract of this character would not be recognised by a Court of law, either for its enforcement or in respect of its breach."

And the Court of Appeal concluded that this principle is unchanged and is required to be upheld at all times.

In my opinion this principle is to be observed and maintained in the context where a member of Parliament finds himself appearing before a Court of law. In the present case the petitioners were not before a Court of law, rather they were before Parliament without charges and any evidence substantiating the allegations made against them. Parliament's concern about protecting its integrity is legitimate in all respects. But unless police investigations are allowed to proceed unhindered and the complaints are brought before the Public Prosecutor to lay charges and have the



petitioners answer those charges in a court of law, and are subsequently found guilty and convicted, there could be no cause for discipline against them in the way Parliament resolved on 25 November 2014.

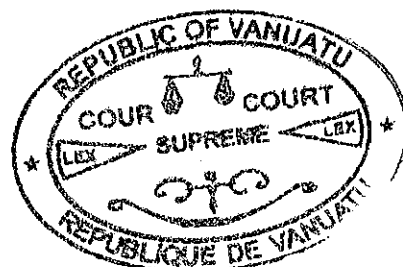
Conclusion

33. Accordingly I am satisfied the resolution to suspend the petitioners by the respondents on 25 November 2014 had breached the petitioners' constitutional rights under the various Articles of the Constitution specified in their petition. Accordingly I enter judgment in favour of the petitioners.

Declarations and Orders

34. The petitioners are therefore entitled to the following declarations and orders –


- (a) A DECLARATION that the Constitutional rights of the Petitioner's pursuant to Articles 5(1)(d), 5(2)(a) and (b), 16, 17, 21, 28, 43(2) and 47(1) of the Constitution have been infringed.
- (b) A DECLARATION that the purported Motion to suspend the Petitioners from Parliament amounts to breaches of their Constitutional rights and is therefore invalid, void and of no effect.
- (c) A DECLARATION that the decision and/or ruling made on 25 November 2014 to suspend the Petitioners from Parliament is invalid, void and of no effect.
- (d) An ORDER quashing the decision to suspend and exclude the petitioners from Parliament.
- (e) An ORDER that the First Respondent and the Police be restrained from preventing access of the Petitioners into Parliament from the date of this Judgment.



- (f) An ORDER that the First and Second Respondents will pay the Petitioners' costs of this action on the standard basis as agreed or taxed by the Court.
- (g) A copy of this Judgment be served on the Police.

DATED at Port Vila this 2nd day of December 2014.

BY THE COURT


OLIVER A. SAKSAK
Judge

