

BETWEEN: Antoine Pikioune

Petitioner

AND: Mark Ati

1st Respondent

Matae Seremiah

2nd Respondent

Date of Hearing of Application: *16th day of March, 2016 at 2:00 PM*

Before: *Vincent Lunabek – Chief Justice*

In Attendance: *Edward Nalyal for Petitioner*
Mr Justin Ngwele for First and Second Respondent

REASONS FOR STRIKING OUT ELECTION PETITION

An election petition was filed on 19 February 2016 by the Petitioner against the First and Second Respondents. The Petitioner was a candidate at the elections held on 22 January 2016 at the Constituency of Luganville, Santo. The First and Second Respondents were declared elected candidates for the Luganville Constituency at those January 2016 elections.

The Petition filed on 19 February 2016 alleges:

1. That the First Respondent committed the offence of bribery when, on 20 January 2016, he, through his agent Irene Malsungai, gave VT1,000 to Ira Kalo and Joana Tari of chapuis area Luganville, Santo, to vote for him.
2. That the First Respondent, committed the offence of bribery, when, he, through his agent, Jerry Simon, gave VT1,200 to Susan Matan of Pepsi area, Luganville to vote for him.



3. That the Second Respondent committed the offence of bribery when on 9 December 2015, he hired Santo Earthworks Company to deliver gravel and sand to Pepsi area green space to build a stage there, which had not been completed by Mr George Wells. The Second Respondent did this to influence the vote of the voters there.

On 19 February 2016, when the Petition was filed, there was no sworn statement filed by the Petitioner in support of the Petition, setting out details of the evidence the Petitioner relies on. There was no any other sworn statements filed in support of the Petition pursuant to Rules 2.3 (2) and 2.5 of the Election Petition Rules.

The Petition was listed for First hearing pursuant to Rules 2.5(3) and 2.6(1) (2) (3) of the Elections Petition Rules on 8 March 2016.

On 8 March 2016 Mr Ngwele informed the Court that he had filed an application with a sworn statement in support to strike out the Petition. The application was listed for hearing on 16 March 2016 at 2.00PM.

The application is advanced on the basis that the Petition does not meet the requirements of the Election Petition Rules, in particular Rule 2.3(2) and that there is no evidence to indicate that if the Petition were to proceed the Petitioner would be able to show to the Court that the actions of the Respondents by the giving of the money or such like must have had an effect on the outcome of the election.

At the First Hearing, the onus is on the Petitioner to lay a foundation for the Petition on the basis of his sworn statement and other sworn statement already filed in support of the Petition pursuant to rules 2.3(2) and 2.5 (1) of the Election Petition Rules.

When the Petition was filed it did not have with it a sworn statement by the Petitioner in support of it, setting out the details of the evidence on which the Petitioner relies on.

There was no statement from persons named in the Petition that were purportedly bribed by the First and Second Respondents.

The Petitioner has not filed any sworn statement to suggest that the actions of the First and Second Respondents occurred from the period commencing at the end of the life Parliament or at the date of the dissolution of Parliament under sub-article 28(2) of the Constitution, to and including, the polling day (22nd January 2016).

The Petitioner filed a sworn statement on 11 March 2016. It is a short statement of 3 paragraphs. It did not set out details of the evidence the Petitioner relies on as required under Rule 2.3 (2) of the Election Petition Rules. A sworn statement was filed by one Gaetan Pikioune, a state minister to the effect that he is assisting the Petitioner with his Petition; that the witnesses of the Petitioner all live in Santo; that the witnesses statements of the Petitioner were sent to the Petitioner's lawyer. Again this sworn statement of Gaetan Pikioune does not assist the onus placed on the Petitioner to satisfy the Court that the Petition filed by the Petitioner on 19 February 2016 has a foundation.



At the end of the hearing of the application to strike out the claim, Mr Nalyal on behalf of the Petitioner accepted that the sworn statement of the Petitioner was filed outside the time requirements of Rule 23(2) of the Election Petition Rules and that it did not set out details of the evidence the Petitioner relies on.

Rules 2.3 (1); 2.5 (1), (2) (3); and 2.6 (1), (2), (3) are the relevant provisions of the Election Petition Rules. They provide as follow:

What a petition must contain

- 2.3 (1) *A petition must set out:*
- (a) *whether the person was registered to vote, or claims to have been a candidate, at the election; and*
 - (b) *the grounds on which the election is disputed; and*
 - (c) *the facts on the which the petition is based; and*
 - (d) *an application for an order about service of the petition.*
- (2) *The petition must have with it:*
- (a) *a sworn statement by the petitioner in support of the petition, setting out details of the evidence the petitioner relies on; and*
 - (b) *any other sworn statements that support the petition.*
- (3) *A sworn statement must be in Form 2.*

Filing

- 2.5 (1) *A petition is filed by lodging 4 copies of the petition and sworn statement with the Court.*
- (2) *After the petition is filed and before returning sealed copies to the petitioner, the Court must*
- (a) *fix a date for the first hearing in the matter; and*
 - (b) *tell the petitioner in writing of this.*
- (3) *The first hearing date must be as soon as practicable and in any case within 21 days after the filing date.*

First hearing

- 2.6 (1) *The first hearing is to be in open court.*
- (2) *At the first hearing,*
- (a) *the petitioner must satisfy the Court that there is a foundation for the petition; and*
 - (b) *the Court must make orders about:*
 - (i) *who is to be a party to the proceeding; and*
 - (ii) *service of the petition; and*



- (c) *the Court must fix a date for the first Conference in the proceeding and write this date on the petition.*
- (3) *If the Court is not satisfied that there is a foundation for the petition, the Court must strike out the petition.*

Considering and applying the provisions of the above relevant Elections Petition Rules, the Petitioner fails to satisfy the Court that the Election Petition has a foundation.

The following orders are made:

ORDERS

1. The Petition has no foundation.
2. It is struck out
3. The First and Second Respondent are entitled to costs assessed in Vatu 30,000 to be paid by the Petitioner by 30 March 2016. The amount of VT20,000 paid by the Petitioner for deposit into Court, will be withheld by the Court and paid instead to the First and Second Respondents as part of their costs against the Petitioner. The Petitioner is still to pay the balance of VT10,000 by 30 March 2016.

DATED at Port Vila this 16th day of March, 2016

BY THE COURT



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Vincent Lunabek
Chief Justice

