

BETWEEN: Edward Molou Nalyal
Petitioner

AND: Tomker Netvunei Naling
Respondent

**Date of Hearing &
Decision:** *17th day of March, 2016 at 10:30 AM*

Before: *Vincent Lunabek – Chief Justice*

In Attendance: *Mr Andrew Bal for Petitioner*
Mr Kiel Loughman for Respondent

REASONS FOR STRIKING OUT THE PETITION

The Petitioner filed his election petition on 19 February 2016. The Petition alleged bribery and treating against the Respondent.

When the Petition was filed on 16 February 2016, there was no sworn statement filed by the Petitioner in support of the Petition, setting out details of the evidence the Petitioner relies on; and there were no any other sworn statements filed that support the petition. (underlined is mine).

A First Hearing was conducted on 8 March 2016 pursuant to Rules 2.5 and 2.6 of the Election Petition Rules. At that First Hearing, the Court was informed by Counsel for the Respondent that he had filed an application to strike out the Petition on the basis that the Petition was filed without a sworn statement of the Petitioner setting out details of the evidence the Petitioner relies on.

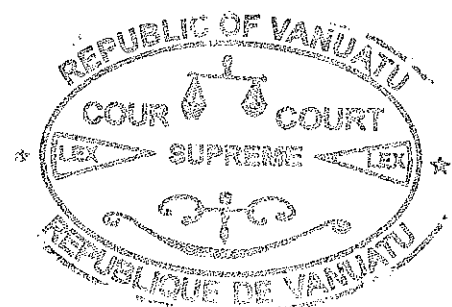
The First Hearing was adjourned and conducted together with the Hearing of the Respondent's application to strike out the Petition on 16 March 2016 at 11.00am. The Hearing was further adjourned to 17 March 2016 at 10.30am.

The Court heard the application to strike out the Petition. The court granted the application by the Respondent and struck out the Petition. The reasons are set out below.

When the Petition was filed on 19 February 2016, it did not have with it a sworn statement by the Petitioner in support of the Petition, setting out details of the evidence the petitioner relies on (emphasis added). There was no any other sworn statements that support the petition when it was filed. So clearly Rules 2.3 (2) (a)(b) are not complied with by the Petitioner.

It is noted that Rule 2.5(1) provides:

"Filing



2.5 (1) *A petition is filed by lodging 4 copies of the Petition and sworn statement with the Court...*"

The Petitioner did not comply with the provisions of Rule 2.5(1) of the Election Petition Rules.

To my mind the Petition filed by the Petitioner on 19 February 2016 is incomplete and as such it is not validly presented by the Petitioner within the time limit set by section 57 (1) of the Representation of the People Act [Cap 146] and the requirements of Rules 2.3(2) (a) (b); 2.5(1) of the Election Petition Rules.

It is noted that the Petitioner filed a sworn statement on 11 March 2016 but it did not set out details of the evidence the Petitioner relies on (emphasis added).

It is also noted that there were sworn statements filed on 24 February 2016, 4 March and 8 March 2016 to support the Petition. However, the Election Petition Rules are issued in accordance with Section 59(1) of the Act [Cap 146]. These rules must not be inconsistent with the Act concerning the conduct of the proceedings before the Supreme Court.

The Petition as envisaged under section 57 of the Representation of the People Act [Cap 146] is the Petition filed inclusive of the sworn statements by the Petitioner setting out details of the evidence the Petitioner relies on and any other sworn statements in support of the Petition. The sworn statements were not filed with the Petition pursuant to Rule 2.3 (2) (a) (b) and 2.5 (1) of the Election Petition Rules. The Petition must be struck out. The Election Petition Rules are made pursuant to the powers under section 59(1) of the Representation of the People Act. They cannot be inconsistent with the provisions of the Act and when applied, they must be applied consistently with the provisions of the Act as those rules provide and require.

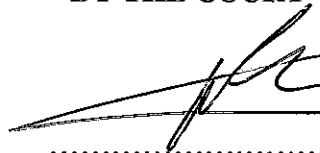
Jimmy -v- Rarua [1998] VUCA 4 and Leinavao Tasso -v- Ioan Simon Omawa and others, Election Petition case No.1 of 2008, are the authorities for the striking out of the Petition. The Court makes the following orders:

ORDERS

1. The Petition is struck out
2. The Respondent is entitled to his costs of Vatu 30,000.
3. The deposit of VT20,000 lodged by the Petitioner with the Supreme Court shall be withheld and paid to the Respondent as part of his costs.
4. The Petitioner shall pay the balance of the Respondent's costs by 7 April 2016.

DATED at Port Vila this 17th day of March, 2016

BY THE COURT



**Vincent Lunabek
Chief Justice**

