

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

Election Petition
Case No. 20/923 SC/EP

IN THE MATTER OF: THE REPRESENTATION OF THE PEOPLE ACT
1983 AND ITS AMENDMENTS

AND: IN THE MATTER OF NATIONAL GENERAL
ELECTION FOR PARLIAMENT FOR MALO
CONSTITUENCY HELD ON 19TH OF MARCH
2020

BETWEEN: Warawara Uri

Petitioner

AND: Rasu Wesley

First Respondent

AND: The Principal Electoral Officer

Second Respondent

AND: Electoral Commission

Third Respondent

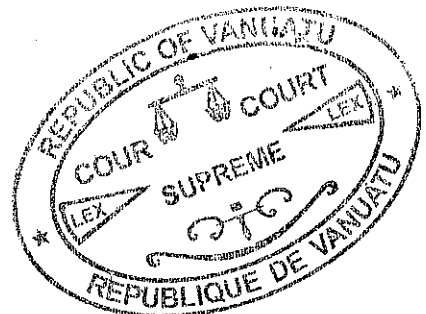
Date of Hearing: 23rd June 2020
Date of Decision: 10th July 2020
Before: Justice Oliver.A.Saksak
In Attendance: Mr Daniel Yawha for the Petitioner/ Respondent
Mrs Florence Williams Samuel for the Second and Third
Respondents
Mr Edward Nalyal for the First Respondent

DECISION

1. The application by the Second and Third Respondents to strike out the petitioner's petition is allowed.

Introduction

2. The Attorney General filed an application on 8th June 2020 seeking orders that-
 - (a) The petition of the petitioner filed on 25th April 2020 be struck out, and
 - (b) The petitioner pays costs in the sum of VT 100.000.



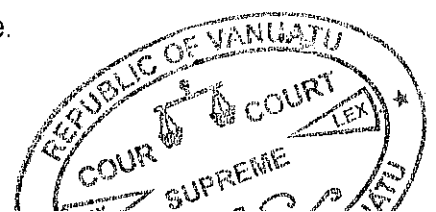
3. The ground of the application is that the claim is incomplete and as there has been a failure by the petitioner to file the necessary evidence in support of the petition within the 21 days permitted by section 57 of the Representation of the People Act [CAP. 146] (the Act), and Rule 2.3 of the Election Petition Rules 2003.

Submissions

4. The Attorney General filed written submissions on 8th June 2020 in support of the application. He submitted that despite the fact that the petitioner has filed sworn statements showing there were some proxy votes allowed which were not in compliance with the provisions of the Act, including the claimed irregularity of not having the petitioner's photograph in the polling stations at Avunatari, Nanucu, Avunaleleo and Amabelao, these were less than 20 and it was sufficient to affect the result of the election.
5. The Attorney General relied on the cases of **Job Andy v Electoral Commission & Tasso (EP 16/238)** as the basis for the Second and Third Respondent's arguments that the petition was incomplete. This was due to the absence of any prima facie evidence to satisfy the Court as to the foundation for the petition. As such the petition should be struck out.
6. The petitioner filed responding submissions on 12th June 2020 arguing to the contrary. He submits section 57 of the Act had been complied with by filing the petition within 21 days. Further, that the documents filed after the 21 days were done pursuant to a Court order for disclosure of documents and which the petitioner alleges has not fully complied with. The petitioner alleges the Second and Third Respondents have not disclosed proxy cards or forms for Ambakura and Amabelao Polling Stations.
7. The petitioner submits that the cases of **Andy** and **Jimmy** are distinguishable from the present case and are not applicable. He submits that he has established a prima facie case having foundation that warrants a full hearing.

Background

8. On 30th April 2020 the Court issued an order recording that the Court was satisfied there was foundation established for the petition. That view was based on section 56 of the Act which requires that a petition shall not be valid unless (a) it was filed within the 21 days required by section 57 (1) and (b) the petitioner had paid VT 20.000 as deposit fee.

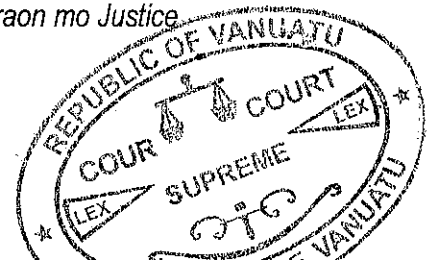


9. The petition was filed on 28th April 2020 within the 21 days period permitted by the Act. It was supported by the sworn statements of the petitioner himself filed on the same date, of Tugu Sohe, and of Rongo Mdivahatoli also filed on 28th April 2020. These were filed on the very last day of 21 days period. 21 other persons filed supporting sworn statements on 28th April. These were Morris Titus, Alvea Jack, Vanua Turu, Vomle Sano, Sale Silon, May Tae, Henry Rasu (x 2), Livliv Jeajea, Stevane Havo, Timothy Sohe, Ronaldo Rosin, Voriu Blore, Toa Alick, Josua Sikon, Uriurileo Toalaku, Linda Jonathan, Lucian Wusi, and Vosumbue Erenga.
10. The petitioner realised he needed more evidence so he filed an application seeking an order for disclosure of documents also on 28th April 2020. The Court heard the application and ordered disclosure on 30th April 2020.
11. Disclosure had not been completed and both the petitioner and the Attorney General requested and agreed to an extension on 14th May 2020 to 8th June 2020. The Court also granted liberty to the Second and Third Respondents to make any application for a strike out on 14th May. The application by the Second and Third Respondents was made in exercise of that liberty.
12. On 4th June 2020 the petitioner filed his final sworn statement annexing the documents disclosed in compliance with the order of 30th April as extended on 14th May 2020. Earlier on 3rd June Boe Matakas Alona filed a statement in support of the petitioner. Serah Maralao, Peter Lele and Jonethan George also filed statements in support on 3rd June 2020.
13. Altogether the petitioner has about 28 sworn statements including the petitioner's statement of 28th April and of 4th June 2020.
14. Despite all these evidence the Attorney General submits the evidence is insufficient to found the basis of this petition and as such it should be struck out.

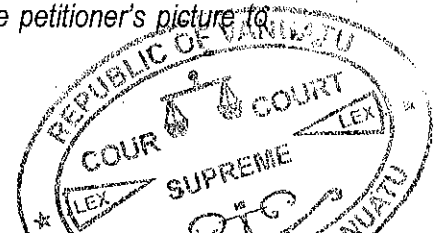
Discussion

15. When the foundation of this petition is challenged on the basis of insufficient evidence, it behoves me to examine again the petition itself. For this purpose I set out the petition in full:

"1. *The petitioner is a candidate who contested the National General Election of 19th March 2020, under the Logo and Policy of the Political Party of Graon mo Justice Party (GJP).*



2. *The First Respondent is also candidate of Malo/Aore Constituency under the Logo and Policy of Vanuaku Party (VP) and was declared by the Third Respondent as the successful candidate with 1,334 votes.*
 3. *The Second Respondent is responsible for the organization and administration of the election.*
 4. *The Third Respondent is responsible for declaration of candidates to contest the elections and the successful candidate after the election.*
 5. *The Petitioner is the run up of Malo/Aore 1 seat against the successful candidate, the First Respondent with 1,288 votes, lost by 47 votes only.*
 6. *The Petitioner exercise his right under s.54 & s.58 of the Representation of the Peoples Act [CAP 164] in this Court that the declaration of the First Respondent by the Third Respondent as the successful candidate should be declared void.*
 7. *The ground upon which the Petitioner disputes the declaration of the First Respondent was that there has been such non-compliance with the provisions of the Act, in the conduct of the polling which affected the result of his election.*
- (A) *Particulars of breaches against the Second and Third Respondent in relation to proxy votes*
- a. *There were more than 200 proxy votes approved by Second Respondent to vote on Malo/ Aore Constituency.*
 - b. *These proxy were sponsored and applied for by the First Respondent and his Agents.*
 - c. *That already few of these proxies were discovered to be defective and were not complied with the schedule 4 of the provision of the Representation of the Peoples Act in relation to proxies as per sworn statement of Livliv Jeajea, Alick Toa, Alfea Jack, but due to time constraints more will testify should the Court order full inspection and disclosures of the proxy documents and rolls for this constituency.*
 - d. *That with the time constraint of 21 days, the petitioner has applied for disclosure of the entire proxies for this constituency in the course of this proceedings with the sworn statements in support filed herein.*
 - e. *That with sufficient defects of the proxies that were not done in compliance of the Act has affected the election results.*
- (B) *Particulars of breaches against the Second and Third Respondents in relation to irregular ballot papers that did not have the picture of petitioner's photo for voters to vote on.*
- a. *At Avunatari polling station ballot papers were discovered by 12 voters openly complain to the polling clerks that heir ballot papers did have the petitioner's picture to vote on.*
 - b. *At Nanucu polling Station 2 voters also discovered their ballot papers and openly complain to the clerks that their ballot papers did not have the petitioner's picture to vote on.*



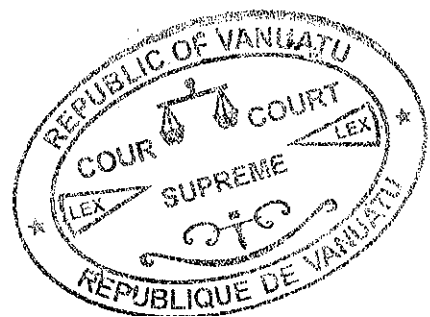
- c. At Avunaleleo polling station 2 voters did likewise.
 - d. At Amabelao another 2 voters also did likewise.
 - e. That 20 voters have raised complaint after the polling day to the petitioner to have noticed the defects.
 - f. That such irregularity has affected voters who should vote for the Petitioner but voted their second or third choice which has affected petitioner's result.
8. And because of the above breaches of the First, Second and Fourth Respondents, the Petitioner had his results affected by 47 votes which led him to run up.
9. The Petitioner claims the breaches were so extensive that election of the First Respondent was unsafe and should be declared void.

WHEREFORE THE PETITIONER SEEKS THE FOLLOWING ORDERS:

- a. That First Respondent election be declared void as he was not an eligible candidate to contest 19th March 2020 election initially and the Petitioner as a run up be declared a winning candidate in the Malo/Aore Constituency, or
 - b. An order that the General Elections of the Malo/Aore Constituency be declared void and becomes vacant and a by election be held to fill such vacancy.
 - c. Costs
 - d. Any other Orders deem just."
16. Rule 2.3 of the Election Petition Rules 2003 (the Rules) provide for what a petition must contain. It states:

"2.3 What a petition must contain

- (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 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."



17. Examining the pleadings in the petition in the light of these Rules it can be seen that-

(a) From paragraphs 1, 2, 3, 4, 5 and 6, these are the facts on which the petition is based on. These accord with Rule 2.3 (a) and (c).

(b) From paragraphs 7A, B, C, 8 and 9, these are the grounds. These accord also with Rule 2.3 (1)(c).

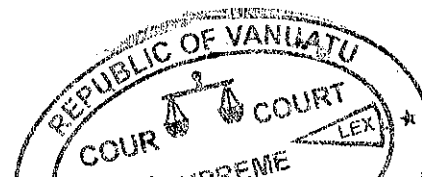
(c) An urgent application filed on 28th April 2020 seeking an order for disclosure was in effect an application for an order for service- Rule 2.3 (1) (d).

18. It appears from these that at least Rule 2.3 (1) was complied with. The difficulty arises with the sworn statements required by Rule 2.3 (2). On the date of filing the petition being 28th April 2020 the petitioner filed 1 sworn statement and 23 others in support in compliance with Rule 2.3 (2).

19. The petitioner filed another sworn statement on 4th June 2020 and 3 others in support on 3rd June 2020 from Serah Maralao, Peter Lele and Jonathan George.

20. The 3 statements by Peter Lele, Serah Maralo and Jonathan George were late statements. The Court did not order the filing of these statements. The only statement the Court would accept was the petitioner's filed on 4th June 2020. This was due to late disclosures of documents by the Second Respondents as a result of extension of orders. The petitioner was the only person to have filed a statement disclosing the Electoral Roll of Avunatari Polling Station, not Jonathan George as he annexed in "JG2". These 3 statements are therefore inadmissible. That leaves the petitioner with 25 sworn statements.

21. In paragraph 7A of the petition the petitioner pleaded in (a) that the second respondent approved more than 200 proxy votes to vote in Malo/Aore Constituency and, in (b) he pleaded that those proxies were sponsored and applied for by the First Respondent and his agents. There is however no evidence to substantiate his pleading in (b). In relation to the 200 proxies he alleged in (a) he produced evidence from Livliv Jea Jea, Alick Toa and Alfea Jack who deposed to sworn statements filed on 28 April 2020. Alick Toa says he did not travel overseas on 3rd March 2020 (paragraph 2) yet he says at paragraph 3 he was in Vila on 3rd March and



on 19th March 2020. That means on 19th March 2020 he was not on Malo to vote and someone voted proxy for him. There is no evidence of who this person was and his affiliation or support and whether it was in favour of the petitioner.

22. Livliv Jeajea's sworn statement confirmed he signed proxy documents for his son Steward who lives in Vila. Again he does not say who voted in proxy for his son and whether that person was affiliated to or supportive of the petitioner.

23. Alvea Jack says in his sworn statement he was shown a proxy card showing he had travelled overseas on 4th March (para.2) but says in paragraph 3 that he was in Port Vila on 4th March and 19th March 2020 being Election Day. But he does not say who voted on the card and whether that person was an affiliate to or supportive of the petitioner so as to alter his votes.

24. These 3 statements therefore do not assist the petitioner's case in terms of increasing the number of his votes, to affect the result of election.

25. In paragraph 7B of the petition the petitioner alleged there were 9 voters at Alowaru Polling Station who were allowed to vote without valid electoral cards and 1 voter who voted by proxy without proxy documents. The petitioner has no evidence from these 10 persons to confirm and support his allegation and to confirm their affiliation and support for him. He needed another 37 people to show that election results could be or were affected.

26. In paragraph 7C of the petition the petitioner alleged lack of or omission by the Second and Third respondents for placing the petitioner's photographs at Nanuku Polling Station x 2 voters, Avunatari x 12 voters, Avunaleleo x 2 voters, Amabelao x 2 voters and that 20 of the voters raised complaints after polling day to the petitioner. Adding these together the petitioner would get 38 votes. He still lacks 19 more to reach the First Respondent's votes. Therefore he has not shown the results of the election were or could be affected, even if there were breaches by the Second and Third respondents.

27. The petitioner filed sworn statements from 14 persons who say they attended their respective polling stations but complained they could not vote because the petitioner had no photograph. Only after their complaints were photographs provided and they voted but they have expressed their humiliation because their votes were supposed to be secret. These 14 voters were Morris



Titus Jeu, Vanua Turu, Vomle Sano, Sole Silon, May Tae, Stevane Havo, Timothy Sohe, Ronaldo Rosini, Voriu Blore, Josua Sikon, Linda Vinda, Lucian Wusi, Vosumbue Erenga and Dechi Erenga.

28. The evidence of these 14 voters do not assist the petitioner's case instead, these were counted as valid votes in his favour. Section 65 of the Act prohibits disclosure of a voter's vote. Therefore these voters should not have been made to depose to their statements revealing their votes, thus lowering his votes to 1,274 instead of 1,288 votes he currently has.

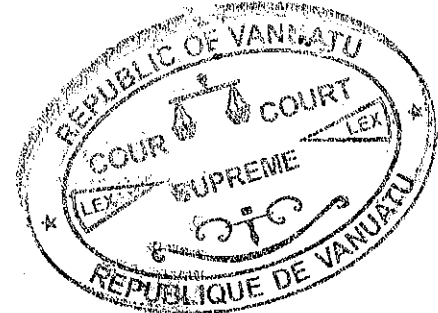
29. Hendry Rasu deposed to 2 sworn statements on 28th April 2020. The first relates to 9 persons he alleges were Vanuatu Party supporters and members of the campaign team. He does not give any evidence of their acts or omissions which unlawful on the day of polling. The second statement relates to 8 voters at Alowaru Polling Station who were allowed to vote only with their National ID Cards or their birth certificates. There is no evidence confirming this allegation. Those 8 persons could have deposed to sworn statements themselves. And if they voted at all, how would we know they were the petitioner's affiliates or supporters to know if the results of the election were or could be altered?

For those reasons, these evidence do not assist the petitioner's case.

30. Urivileo Toalaku's sworn statement shows that John Rasu voted in his truck rather than in the polling booth and say this vote should be disallowed. In so doing the First Respondent's number of votes would be decreased by one vote to 1,333. Even with that deduction he still has 46 more votes than the petitioner.

31. The statement of Boematakas Alona is late having been filed outside the 21 days period allowed by section 57 of the Act and is not admissible on that basis.

32. Finally the petitioner's sworn statement filed on 4th June 2020 makes disclosures of proxy documents made available to him by the Principal Electoral Officer pursuant to the Court order. But it shows only 26 proxies whereas he complains about 200 proxies in the petition. He lacks another 21 to add up to 47 in order to affect his number of votes as against the First Respondent's votes.



33. From the totality of the petitioner's evidence, even if he has shown there were some breaches of the provisions of the Act, or some irregularities by the Second Third Respondents, the law requires that those breaches or irregularities should be such as to have extensively prevailed that they affected the result of the elections of the Malo/ Aore Constituency so that a by-election could not reasonably be avoided. The evidence is lacking to the extent that it affects the foundation of this petition.

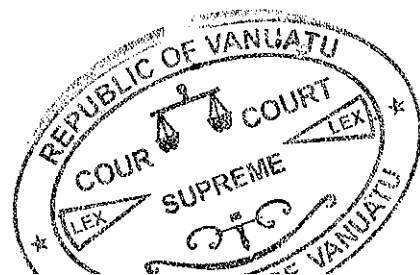
34. Finally I examine the reliefs sought as follows;

"(a) That the election of the First Respondent be declared void as he was not an eligible candidate to contest the 19th March 2020 elections initially and that the petitioner as a runner-up be declared a winning candidate in the Malo/Aore Constituency, or

(b)An order that the General Elections of the Malo/Aore Constituency be declared void and becomes vacant and a by-election be held to full such vacancy."

35. The relief sought in (a) is inconsistent with the pleadings. An examination of votes and a recounting of votes is necessary for that relief to be possible, however section 62 of the Act is not pleaded. Secondly, for the relief sought in (b) to be possible section 61 of the Act should have been pleaded but it has not been so pleaded. Those failures or omissions render this petition not only incomplete but it is also defective. In the case of **Stephen D Felix x Principal Electoral Officer and others EP 20/824** this Court dismissed the petition for these same reasons.

36. Election petitions are costly and very serious matters. Section 57 (1) and (2) and 58 (1) of the Act stipulate the mandatory prerequisites that must be complied with. These require seriousness on the parts of petitioners who must ensure their reliefs are clear, correct and consistent with their pleadings. Further petitioners must ensure they file the relevant and admissible evidence within the mandatory periods allowed by the Act so as to reinforce the foundations of their petitions.



The Result

37. This petition fails and falls for those reasons. Accordingly it is dismissed.

38. The petitioner will pay costs to the Second and Third Respondents only fixed at VT 50.000. I order that the deposit of VT 20.000 be released by the Registrar to the State in reduction of the costs of VT 50.000. The petitioner shall pay the balance of VT 30.000 within 14 days from the date of this judgment.

DATED at Port Vila this 10th day of July 2020

BY THE COURT


OLIVER.A.SAKSAK
Judge

