

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

**Judicial Review**  
**Case No. 20/555 SC/JUDR**

**BETWEEN: Joe Natuman**

**Claimant**

**AND: The Electoral Commission**

**Defendant**

***Date of HEARING:*** 11<sup>th</sup> March 2020 9:30am  
***Date of Decision:*** 11<sup>th</sup> March 2020 2:00pm  
***Before:*** Justice Oliver Saksak  
***In Attendance:*** Nigel Morrison for the Claimant  
Silas Hakwa for the Defendant  
Frederick Gilu for the Second Defendant ( Government of the  
Republic of Vanuatu- excused)

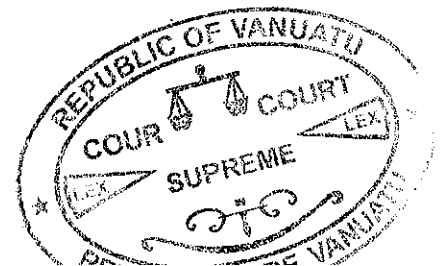
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**DECISION**

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**Background**

1. This is an urgent judicial review claim filed on 6<sup>th</sup> March 2020.
2. As such, times for responses have been a bridged.
3. Mr Hakwa filed a defence and sworn statement at 8:00am today ( 11<sup>th</sup> March) about an hour prior to the Rule 17.8 Hearing.
4. At the hearing Mr Frederick Gilu, the Solicitor General appeared to clarify certain matters. First that the Attorney General had instructed Mr Hakwa to act for both Mr Martin Tete, named as First defendant and also for the Government named as second defendant due to the previous advices the Attorney General had provided to the Electoral Commission in relation to the application of Mr Natuman, the Claimant.
5. At the outset of the hearing it was accepted by Mr Morrison after reading the defence filed that the wrong parties had been named. Accordingly Mr Morrison sought leave



to orally apply to have the Electoral Commission as the Defendant instead of Martin Tete and that the Government of the Republic be removed as the second defendant.

6. Mr Hakwa raised no objections therefore leave was granted and Mr Tete was removed and replaced by the Electoral Commission as the only defendant in the proceeding. The Government of the Republic of Vanuatu was removed as second defendant.
7. Accordingly leave was granted and the changes were appropriately made being JOE NATUMAN as claimant and ELECTORAL COMMISSION as the defendant.

### **The Facts**

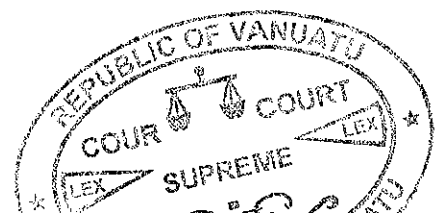
8. On 28 January 2020 the claimant lodged his application to be declared as a candidate for the 19<sup>th</sup> March 2020 General Election.
9. On 3<sup>rd</sup> March 2020 the Electoral Commission wrote a letter advising him that he was disqualified for standing in the General Election.
10. The decision was made pursuant to section 24 (1) (b) of the Representation of the People's Act [ Cap.146].

### **The Claim**

11. The Claimant seeks to judicially review that decision. He seeks two orders that-
  - a) The decision of 3<sup>rd</sup> March 2020 be quashed, and
  - b) The Defendant be required to include the claimant's name in the list of candidates for the Tanna Constituency qualified to contest the Parliamentary General Election on Thursday 19<sup>th</sup> March 2020.

### **The Arguments**

12. Mr Morrison relied on his written submissions dated 9<sup>th</sup> March 2020. In summary Counsel explained that what the claimant was asking the Court to do is interpret the word "stand" in section 24 (1) of the Act and the question of whether it includes the declaration date or the polling day ?



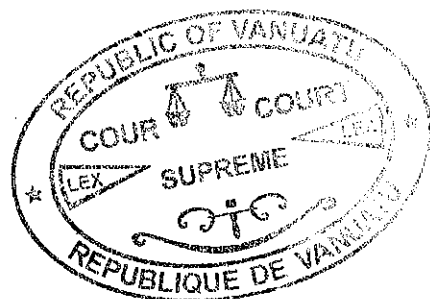
13. Taking this issue into consideration Mr Morrison submitted the Tests in Rule 17.8 were met and that the matter should proceed to a full hearing. Mr Morrison relied on the case of Jackleen Titek v Electoral Commission [2002] VUSC 22 to argue that section 26 (4) of the Act is unconstitutional and that it cannot be relied on by the defendant as a defence.
14. Mr Hakwa in response relied on the defence filed and accepted that the tests in (b), (c), and (d) were met by the claimant. However Counsel argued the claimant had no arguable case to satisfy the first test in Rule 17.8 (3) (a). Mr Hakwa argued the tests are conjunctive, not alternatives.
15. Mr Hakwa argued first that there was no lawful application by the claimant to stand as a candidate because section 24 (1) (b) was not met by the claimant. Counsel submitted the only decision the defendant could make on 3<sup>rd</sup> March 2020 was to reject the application on the basis it being invalid. Counsel further argued on 3<sup>rd</sup> March 2020 the defendant had no obligation to decide anything, and argued further the claimant could have waited until after 16<sup>th</sup> March 2020 when his sentence would end and only then could he lawfully apply.
16. Further Mr Hakwa submitted that the decision made by the defendant on 3<sup>rd</sup> March 2020 declaring the claimant's declaration invalid is final pursuant to section 26 (4) of the Act. As such it cannot be challenged.

### The Law

17. Rule 17.8 (3) states-

*“(3) The judge will not hear the claim unless he or she is satisfied that:*

- (a) the claimant has an arguable case; and*
- (b) the claimant is directly affected by the enactment or decision; and*
- (c) there has been no undue delay in making the claim; and*
- (d) there is no other remedy that resolves the matter fully and directly.”*



18. Rule 17.8 (5) states-

*“5) If the judge is not satisfied about the matters in subrule (3), the judge must decline to hear the claim and strike it out.”*

19. Section 24 (1) (b) provides for Eligibility of candidate as follows:-

*“(1) Subject to section 23 a person shall be eligible to stand as a candidate for election to Parliament if he –*

*(a).....*

*(b) has not received a sentence including a suspended sentence of a term or terms of imprisonment which has not ended....”*

20. Section 25 (1) provides for Declaration of Candidates as follows-

*“(1) Not later than a date declared by the Electoral Commission by Order every candidate for election shall lodge with the Electoral Office –.....”*

21. Section 26 provides for Declaration of invalidity of Candidature by Electoral Commission as follows:-

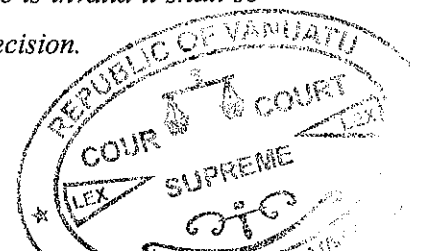
*“(1) When a declaration of candidature has been delivered and a deposit paid in compliance with section 25 the candidate shall stand sponsored for election unless and until the Electoral Commission declares the candidature invalid or evidence is given to the satisfaction of the Electoral Commission that the candidate has died, or the candidate withdraws by notice in writing given to the Principal Electoral Officer.*

*(2) The Electoral Commission shall only declare a candidature invalid if –*

*(a) the candidate or his sponsors do not have the necessary qualifications or are disqualified; or*

*(b) the declaration of candidature is not sponsored as provided in section 25(2).*

*(3) Where the Electoral Commission decides that a candidature is invalid it shall so endorse the declaration of candidature giving reasons for the decision.*



*(4) The decision of the Electoral Commission that a candidature is valid or invalid shall be final and shall not be questioned in any proceedings whatsoever.*

*(5) Nothing in this section shall prevent the Supreme Court declaring the election of a candidate void after the election on the grounds that he was not qualified or was disqualified for election”*

## **Discussion**

22. Mr Hakwa readily accepted that the claimant was directly affected by the decision of the defendant of 3<sup>rd</sup> March 2020 and that there has been no undue delay in him filing the claim. Counsel also accepted the claimant has no other remedy that resolves the matter fully but this appears to be inconsistent with his argument that the claimant could lawfully apply only after 16<sup>th</sup> March 2020. That is a remedy open to the claimant under section 27 (2) of the Act.

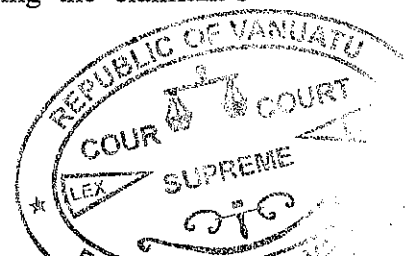
23. The only real issue is whether the claimant has an arguable case?

24. On the material before me, there are no disputed facts. The only word requiring interpretation is the word “**stand**” in section 24 (1) . That is a legal issue.

25. On 28 January 2020 when the Claimant lodged his declaration for candidature he did so knowingly that he had and still has a suspended term of sentence which has not ended. He did so knowing that he was ineligible but did so anyway. And the only decision the claimant could reasonably expect to get from the defendant was what he got. So does that make his case arguable? The answer in my view is , “No”.

26. The only time the claimant would have any arguable case was to wait until his sentence ended on 16<sup>th</sup> March 2020 and apply under section 27 (2) of the Act and that application refused by the defendant, then the claimant would and could have an arguable case. But this is not the case.

27. There is a further legal impediment. Section 26 (4) of the Act is clear that the decision made by the Electoral Commission on 3<sup>rd</sup> March 2020 declaring the claimant’s candidature invalid is final and cannot be questioned in this Court.



28. The Claimant relied on the case authority of Jackleen Titek v The Electoral Commission [2002] VUSC 22 but that case differs in that the claimant sought a declaration amongst others, that section 14 (7) was unconstitutional. The claimant in this case has not done this in this case. Therefore he has no arguable case and no cause of action before the Court.
29. The claimant's remedy does not lie in a judicial review claim. His remedy lies within section 27 (2) of the Act.
30. The claimant has not satisfied the Court that he has met the test in Rule 17.8 (3) (a) and (d) which are conjunctive tests.
31. Accordingly I decline to hear this claim and hereby strike the claim out in its entirety pursuant to Rule 17.8 (5).

**DATED at Port Vila this 11<sup>th</sup> day of March 2020**

**BY THE COURT**

  
**OLIVER.A.SAKSAK**

**Judge**

