

**BETWEEN: Jacob Bani**

**Claimant**

**AND: Lulu Sakias**

**First Defendant**

**AND: Electoral Service Commission**

**Second Defendant**

**Date of Hearing :** 13<sup>th</sup> October 2020  
**Date of Judgment:** 16<sup>th</sup> October 2020  
**Before:** Justice Oliver.A.Saksak  
**In Attendance:** Mr Lent Tevi for the Petitioner  
Mr Daniel Yawha for the First Respondent  
Tom Loughman for the Second Respondent

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**JUDGMENT**

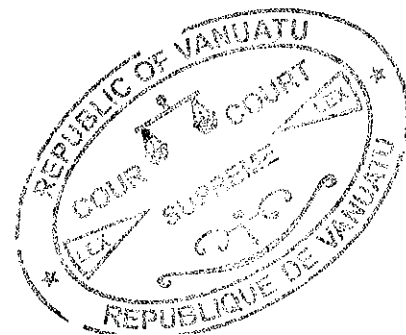
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**Introduction**

1. In this petition the petitioner Jacob Bani challenges the validity of Lulu Sakias's election for the 7<sup>th</sup> seat of the Santo Constituency. The petitioner alleges there had been such non-compliance with the Act in the conduct of polling at the Vimele Polling Station in that (a) Vimele was not a registered polling station, (b) it had no polling officers, clerk or political observers on polling day, no registered electoral roll, no report book, no oaths and no record of counting. He alleges these are breaches of section 61 (1) (b) of the Representation of the People Act [CAP 146] ( the Act).

**Facts**

2. The petitioner was one of the 33 candidates standing for elections on 19<sup>th</sup> March 2020 for 7 seats in Parliament for the Santo Rural Constituency.



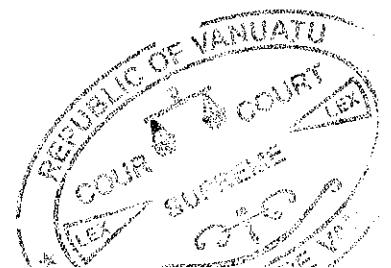
3. Out of the total votes of 23,782 cast he scored a total of 1131 votes to which he disagrees. He says he should have scored 1141 votes.
4. At Vimele Polling Station the petitioner secured 4 votes while the First Respondent secured 202 votes.

### **Relief Sought**

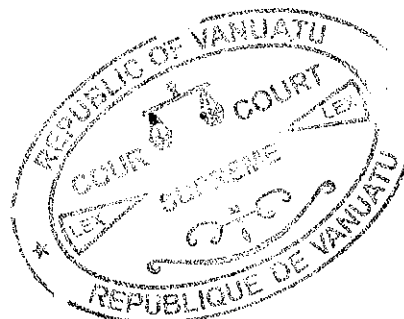
5. The petitioner challenges the results of the elections for the Santo Rural Constituency and seeks orders that-
  - (a) Voting at Vimele Polling Station be declared void,
  - (b) There be a recount of votes for the Santo Rural Polling Stations, to ascertain votes cast in his favour and of the First Respondent,
  - (c) He be declared the winning candidate for the 7<sup>th</sup> Seat for the Santo Constituency instead of the First Respondent, and
  - (d) He be paid costs.

### **Discussion**

6. In the course of the management of the case Mr Tevi had withdrawn the second ground of the petitioner's petition. That essentially means the petitioner has abandoned his relief for a recount of votes.
7. His only challenge is in relation to polling at the Vimele Polling Station. His legal argument was simply that as Vimele was not a registered polling station pursuant to Order 36 of 2001, polling at Vimele should be declared void. His other arguments were that the designation of Vimele as a polling station should have been done by order and published in the Gazette in accordance with precedents in 1983, 1991 and 2008.
8. Facts were not in dispute. The State conceded Vimele was not a registered polling station but argued it was part of Wailapa which is a registered polling station. It was submitted by the State that due to a dispute over land in 2012, there were still fears in the minds of voters and to ensure these people exercised their constitutional rights to vote, the Second Respondent pursuant to its powers in sections 4 and 69 of the Act, the designation of Vimele as a polling station for was lawful.



9. The State further submitted the petitioner did not meet the mandatory requirement of section 58 (1) of the Act and failed to comply with the requirement of Rule 2.4 (1) of the Election Petition Rules by not naming every other winning candidates whose elections would be affected as a result of the petition.
10. The State's submissions were essentially in support of Mr Yawha's submissions on behalf of the First Respondent. They supplemented each other.
11. Mr Tevi submitted that the Court had decided the issue of the illegality of the Vimele Polling Station in its decision of 20<sup>th</sup> May 2020.
12. I have reflected on that decision in light of the more full and comprehensive submissions by the State and by Mr Yawha. I must therefore accept that pursuant to sections 4 and 69 of the Act and in light of the circumstances prevailing at the time of polling that is the dear existing in the minds of the voters who would be denied their rights vote. Had Vimele not been designated a Polling Station, the constitutional rights of voters would have been denied. In that circumstance, the designation was properly made and there can be no challenge to it.
13. The petitioner had challenged the 1131 votes he was allocated as the official results. In order to succeed on that I accept the State's submissions he had to comply with Rule 4.2 (1) of the Rules by naming all the other winning candidates. He had failed to do that.
14. In similar vein regarding the 202 votes cast in favour of the First Respondent at Vimele Polling Station the petitioner has not specified any grounds in his petition upon which the election of the First Respondent should be disputed and declared void.
15. The facts he pleads at paragraphs 6, 7 and 8 relate to 1145 votes and 1022 votes won by the First Respondent and the unofficial result of 28 polling stations.
16. The petitioner or however lacks the evidence showing actions of the First Respondent which were contrary under the Act to warrant an order declaring his election void.



**The Result**

17. The petition of the petitioner fails and is hereby dismissed.
18. The respondents seek costs. As a public interest case costs should be very minimal. I order that the VT 20.000 paid by the petitioner as deposit be forfeited and paid to the respondents equally in the sum of VT 10.000 each respondent.

**DATED at Port Vila this 16<sup>th</sup> day of October 2020**

**BY THE COURT**

  
**OLIVER.A.SAKSAK**

**Judge**

