

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

**Election Petition
Case No. 20/909 SC/EP**

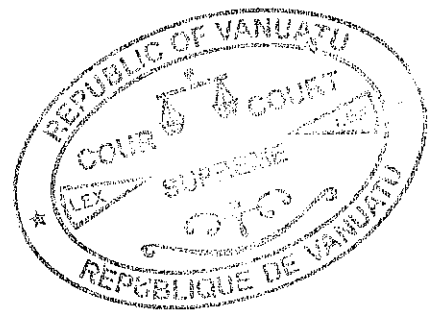
BETWEEN: Jessie Dick Joe
Petitioner

AND: Job Andy
Respondent

Date of HEARING: 12th May 2020
Date of Decision: 15th May 2020
Before: Justice Oliver.A.Saksak
In Attendance: Mr Edward Nalyal for the Petitioner
Ms Juliette Kaukare for Respondent

DECISION

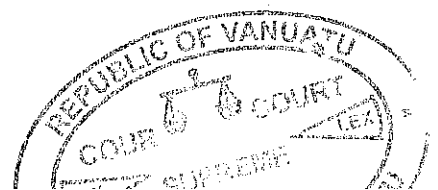
1. The Petitioner filed his petition on 27th April 2020 together with his sworn statement in support. He alleges breaches of section 50 of the Representation of the People Act Cap. 146 (the Act) generally and specifically bribery, undue influence (section 47) and treating (section 46).
2. At first hearing on 29th April 2020 Mr Nalyal sought leave to file an amended petition within 7 days. The Court received indication from Ms Kaukare such amendment would be opposed.
3. The Court granted leave and directed an amended petition be filed within 7 days (by 5th April) together with sworn statements. The Court gave liberty to the respondent to file any application by 11th May and made the hearing returnable today (12th May) for a Rule 2.9 Conference.
4. When this petition was called Mr Nalyal informed that the petitioner had not filed any amended petition as he wished only to maintain his original petition. But Counsel informed the Court that he had filed 14 sworn statements on 11th May 2020. These statements were not on file when the Court heard the application for strike out. This being the reason for the deferral of the Court's decision.



5. Ms Kaukare sought leave to proceed with the application filed on 5th May with a supporting statement of the respondent. I granted leave and heard submissions in support of the strike out application.
6. Ms Kaukare submitted in essence that Rule 2.3 (b) of the Election Petitions Rules was not complied with by the petitioner when filing his petition on 27th April 2020. Further relying on section 57 (3) of the Act, the time limit of 21 days could not be extended. Counsel relied on case precedents of EP 16/397 Edward Nalyal v Tomker Naling and EP 16/238 Job Andy v Electoral Commission in support of her submission. These cases applied Jimmy v Rarua [1998] VUCA 4 and Tasso v Omama & others No 1 of 2008.
7. Mr Nalyal responded. He submitted the petitioner had filed his sworn statement in support of the petition on 27th April. In that statement the petitioner explained the details of the activities complained of and another statement filed on 11th May 2020 explaining the reasons for not filing the other sworn statements on time. Paragraph 3 gives COVID-19 pandemic and the resulting State of Emergency being the main reasons.
8. Mr Nalyal argued the case precedents to relied on by Ms Kaukare were distinguishable and that these were Supreme Court cases which are only persuasive and not binding on me to apply.

Discussion

9. The law and rules are clear. Section 57 (1) states that an election petition shall be presented within 21 days of the date of publication of results in the Gazette and subsection (3) states that the 21 days shall not be extended.
10. Rule 2.3 (2) states the petition must have with it (a) the sworn statement by the petitioner in support setting out details of evidence relied on, and (b) any other sworn statements in support of the petition.
11. In EP 16/397 Nalyal v Naling there was no evidence at all filed with the petition. So that was different. But in EP 16/238 Job Andy v Electoral Commission the petition was filed with one sworn statement in support and no other statements filed on the date of the petition. The other

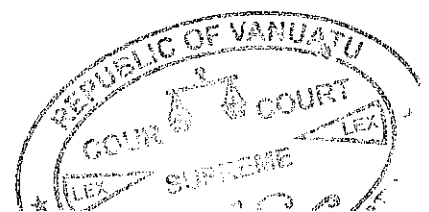


statements were filed later in March and April 2016. The Chief Justice dismissed this petition. The time limit in section 57 (3) was applied strictly and there could be no extension.

12. So is the present petition. When the petition was filed on 27th April it was filed with the petitioner's sworn statement setting out the details of his allegations. But there were no evidence in support of those allegations.
13. When the petitioner sought leave to file an amended petition on 29th April, leave was granted including leave to file sworn statements in support.
14. The Petitioner has sensibly abandoned his intention to file an amended petition. But he has filed 14 sworn statements on 11th May 2020 in support. And the reasons being COVID-19 and the State of Emergency.
15. Clearly his petition filed on 27th April was without evidence in support of his allegations raised in his own statement. Rule 2.3 (2) (b) was not complied with. And the statements filed on 11th May 2020 have been filed well outside of the 21 days period allowed in section 57 (1) of the Act. The petitioner had leave to file an amended petition and sworn statements in relation to that amended petition. He had not done that. Instead he used that liberty to file statements in support of his petition which by Rule 2.3 (2) should have been filed on 27th April 2020. That is the wrong approach. The reasons given for late filing are rejected. The real reason for his failure was because he was not serious about the complaints. Had he been serious, he would have remained on Paama after elections to prepare his documents in anticipation of him losing and the respondent winning.
16. For the purposes of consistency approach, I adopt the reasoning of the Chief Justice in Job Andy's case and the cases of Rarua and Tasso.

Result

17. The petition of the Petitioner is therefore dismissed. The Petitioner shall pay the respondent's costs which I fix at VT 50,000. I order that the deposit of VT 20,000 paid by the petitioner into the Court be released to the respondent in reduction of the costs awarded. The petitioner shall pay the balance of VT 30,000 to the respondent within the next 28 days (by 11th June 2020).



DATED at Port Vila this 15th day of May 2020

BY THE COURT


OLIVER.A.SAKSAK

Judge

