

BETWEEN: BRUNO LEINGKONE TAU
Petitioner

AND: THE SPEAKER OF PARLIAMENT
First Respondent

AND: THE REPUBLIC OF VANUATU
Second Respondent

Hearing: 29 September 2023

Before: Justice W.K. Hastings

Counsel: Mr J. Ngwele and Mr J. Mesao for the Petitioner
Mr G. Blake for the First Respondent
Mrs F.W. Samuel and Mr L. Huri for the Second Respondent

Judgment: 2 October 2023

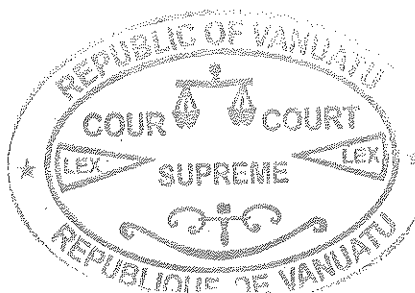
JUDGMENT

Introduction

1. Bruno Leingkone Tau asks the Court for a determination under Article 54 of the Constitution that his seat in Parliament is not vacated by operation of s 2(d) of the Members of Parliament (Vacation of Seats) Act (cap. 174) (the Act), on the ground that he was not absent from three consecutive sittings of Parliament without having obtained permission from the Speaker to be absent. Alternatively, he says he was absent from Parliament "with the tacit or deemed permission" of the Speaker pursuant to Standing Order 96.
2. The Speaker opposes Mr Leingkone's petition.
3. The Republic abides the decision of the Court.

Background

4. Mr Leingkone was elected as a Member of Parliament for Ambrym following the general election held on 13 October 2022.

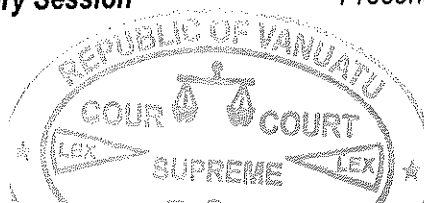


5. Mr Leingkone travelled to South Korea for medical treatment on 24 July 2023 and returned in time for the sitting of Fourth Extraordinary Session of Parliament on 25 September 2023.
6. On the morning of 25 September 2023, before the Fourth Extraordinary Session of Parliament began at 8.45am, Mr Leingkone was served with a letter from the Speaker dated 11 September 2023 informing him that his seat had been vacated by operation of s 2(d) of the Members of Parliament (Vacation of Seats) Act.
7. Immediately after the prayer opening the sitting of the Fourth Extraordinary Session of Parliament on 25 September 2023, the Speaker made the following announcement in Parliament:

In accordance with the MEMBERS OF PARLIAMENT (VACATION OF SEATS), CAP 174, as the Chair, I am now declaring that the seat of the Hon. Bruno LEINGKON, Member for Ambrym is now vacant following his absence on three (3) consecutive meetings.

8. It is useful to set out when Parliament met between the date Mr Leingkone left Vanuatu and the date he returned:

<i>Date</i>	<i>Parliamentary meetings</i>	<i>Mr Leingkone recorded as</i>
10 August	Third Extraordinary Session <ul style="list-style-type: none"> • No quorum. • Sitting adjourned to 16.08.23 at 2pm. 	Absent
16 August	Third Extraordinary Session <ul style="list-style-type: none"> • Sitting 2.20pm to 5.40pm. • Session closed. 	Absent
17 August	Second Extraordinary Session <ul style="list-style-type: none"> • No quorum. • Sitting adjourned to 22.08.23 at 8.30am. 	Absent
22 August	Second Extraordinary Session <ul style="list-style-type: none"> • Sitting 8.41am to 9.05am. • Session closed. 	Absent
4 September	Third Extraordinary Session <ul style="list-style-type: none"> • Sitting 5.15pm to 7pm. • Session closed. 	Absent
20 September	Fourth Extraordinary Session <ul style="list-style-type: none"> • No quorum. • Sitting adjourned to 25 September at 8.30am. 	Absent
25 September	Fourth Extraordinary Session	Present



- *Sitting 8.45am to 9.30am.*
- *Session closed.*

9. Parliament did not meet between the dates listed above. In every case, Hansard refers to the meeting as a "sitting."
10. At the hearing, Mr Leingkone, Mr Simeon, and Mr Maxime Banga, the Acting Clerk of Parliament, were cross-examined on their sworn statements. By agreement of counsel, the sworn statements in support of the petition were admitted with the exception of some paragraphs that contained hearsay or material irrelevant to the determination of the legal issues. These sworn statements were from Jay Ngwele, Member of Parliament for Ambrym; Gracia Shadrack, First Deputy Speaker of Parliament; Sam Tumukon, former Second Political Advisor to the Petitioner; Elfrida Tamtam, Secretary Typist Grade 1 to the Minister of Education; Reginal Garoleo, former First Political Advisor to the Petitioner; Sarlo Stephen, former Second Political Advisor to the Petitioner; and Ulrich Sumtoh, Member of Parliament for Port Vila.

Preliminary remarks

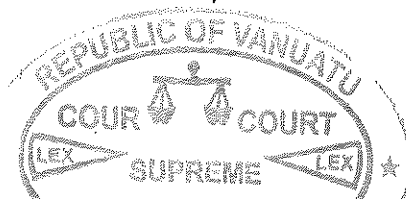
11. It is important to note at the outset that the issues affecting Mr Leingkone's health were significant. In that context, the words of s 2(d) may seem harsh. But the provision is intended to make Parliament operate effectively by ensuring its Members attend, which in turn ensures the people of Vanuatu have a voice in Parliament through their representatives.
12. The Court of Appeal commented on the purpose and effect of s 2(d) in *Carlot v Attorney General* [No. 2] [1988-1994] Van LR 407:

Section 2(d) is designed to ensure attendance by members. That purpose complies with the Constitution because its object is to make parliament effective. Its terms may appear harsh, but if the principle is valid, it is not the business of the Court to interfere with the detail. In our view Section 2(d) complies with the Constitution and is valid.

It was affirmed in Re Boulekone (90 of 1986) that in these circumstances vacation of the seat occurs automatically by operation of law. Once a Member of Parliament has been absent from three consecutive sittings without consent, no further procedural step is required. The seat is vacant.

13. It is also important to note that one of the roles of the Court is to maintain an appropriate separation of powers. The only concern of the Court is with the law; the Court is not concerned with politics.
14. In this regard, the Court of Appeal commented in *Korman v Natapei* [2010] VUCA 14:

Before turning to consider the grounds of appeal we wish to emphasise that this Court in considering the appeal is not interested in or moved by the positions, personalities, or politics (if any) involved in the circumstances that gave rise to this case. This Court is also aware of the constitutional separation of the various



functions and powers of the State between the Legislature, Executive and Judiciary which concept has been jealously guarded and maintained over many years. It is a role of the Court to ensure that an appropriate separation of powers is maintained.

It is not our intention in deciding this matter to interfere with the sovereignty or independence of Parliament in the conduct of its internal affairs as Parliament is entitled to act pursuant to the Constitution; nor do we presume to judge the desirability or efficacy of the established parliamentary "practices and procedures" that form an integral part of that conduct.

15. Finally, as has become evident, s 2(d) has received a great deal of attention in both the Supreme Court and the Court of Appeal. This wealth of case law is of course available to Members of Parliament and is of great assistance to the Court.

Consideration

16. Section 2(d) of the Members of Parliament (Vacation of Seats) Act provides that:

2. Vacation of seats of members

A member of Parliament shall vacate his seat therein –

...

(d) if he is absent from three consecutive sittings of Parliament without having obtained from the Speaker, or in his absence, the Deputy Speaker the permission to be or to remain absent.

17. A "sitting" is defined in the Standing Orders of Parliament as follows:

'Sitting' or 'Sitting day' means the period between the commencement of business on any day until the adjournment of business on that day and includes any period during which Parliament is in Committee of the Whole Parliament;

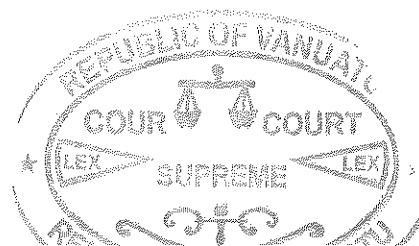
18. "Business" is not defined in the Standing Orders, but in setting out the order of business for each sitting day, Standing Order 20 includes the prayer, reading of the agenda by the Speaker, confirmation of the minutes, business having precedence, and announcements by the Speaker, amongst other matters, as the "business" of each sitting day. "Business" is not confined to the purpose for which an extraordinary session was called, or the agenda.

19. The definition of "sitting" is distinct from a "session":

'Session' means a block of sitting days that constitutes a meeting and includes the two ordinary sessions held each year, any extraordinary session and any special sitting;

20. The definition of "meeting" incorporates both "sitting" and "session":

'Meeting' means any sitting or series of sittings during which the Parliament is sitting without special adjournment during the same session;



21. Section 2(d) is only concerned with sittings, not sessions or meetings. It comes into operation when a Member has been absent from three consecutive sittings without having obtained the Speaker's permission to be absent.

22. The issues for determination therefore are as follows:

- a. Was Mr Leingkone absent from Parliament for three consecutive sittings?
- b. If so, did Mr Leingkone obtain from the Speaker permission to be absent from those sittings?

Was Mr Leingkone absent from Parliament for three consecutive sittings?

23. Although Mr Leingkone is recorded as absent from Parliament on 10, 16, 17 and 22 August, and 4 and 20 September, and there were no meetings of Parliament in between these meetings, Mr Ngwele submits that Mr Leingkone was not absent from three consecutive sittings because the meetings that were adjourned without quora were not sittings, and to be consecutive, the sittings have to occur in one session.

24. I will deal first with the meaning of "consecutive." The online version of the Oxford English Dictionary defines consecutive in the following terms:

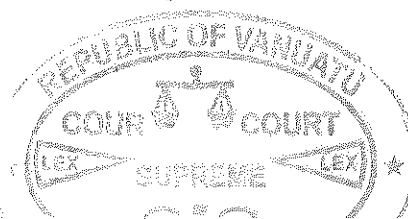
Consecutive, adj. Following continuously; following each its predecessor in uninterrupted succession

25. Mr Ngwele submitted that Mr Leingkone did not miss three consecutive sittings because the first two sittings from which his absence was recorded, on 10 and 16 August 2023, were in the Third Extraordinary Session, whereas the next sitting on 17 August 2023 was in the Second Extraordinary Session. In other words, Mr Ngwele submitted that the closure of a session interrupts the succession of sittings that is required by the ordinary meaning of "consecutive."

26. I disagree. To adopt Mr Ngwele's submission would be to read words into s 2(d). In *Boulekone v Timakata* [1980-88] Van LR 228, the Full Court of the Supreme Court said "The Courts too are reluctant to add words of excuse to a mandatory prohibition clearly stated in a statute" (at 230) and "it is not our duty to introduce elements into section 2(d) in order to make it less harsh" (at 231). Section 2(d) refers to "three consecutive sittings," not "three consecutive sittings in one session."

27. Further, this point was decided in *Carlot v Attorney General* [No. 2] [1980-88] Van LR 407. In that case, the Court of Appeal said:

A parliamentary session may be divided into meetings; meetings may be divided into sittings. But we cannot see how sittings can cease to be "consecutive" (using that word in its natural and ordinary sense) simply because they form part of consecutive meetings. If a member is absent from the last sitting of one meeting, and the first two sittings of the next meeting, he has been absent for three consecutive sittings.



The Court of Appeal reconfirmed this interpretation in *Shadrack v Speaker of Parliament Simeon Seule and Republic of Vanuatu* [2020] VUCA 14.

28. Mr Ngwele also submitted that there is no sitting of Parliament if there is no quorum. This point has also been decided in *Carlot* (at 409):

We are encouraged in this by the wording of Article 19(4) of the Constitution which states what must occur "... if there is no quorum at the first sitting ...". This indicates that there is a "sitting" although there may be no quorum. On each day when parliament assembles and the Speaker takes the chair, there is a sitting.

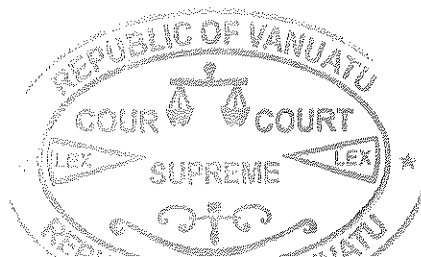
In the six sittings of Parliament identified above in which Mr Leingkone was recorded as absent, three of them, on 10 August 2023, 17 August 2023, and 20 September 2023, were adjourned by the Speaker because there was no quorum. In each of those cases, Hansard records that the Speaker then "adjourned the *sitting*" (my emphasis).

29. Sittings do not cease to be consecutive just because they occur in different sessions or because they are adjourned for lack of a quorum. As long as there is a succession of sittings without interruption, they are consecutive. I find therefore that Mr Leingkone was absent from six consecutive sittings of Parliament, on 10, 16, 17, and 22 August 2023, and 4 and 20 September 2023. The Act is however only concerned with a Member of Parliament's absence in three consecutive sittings. In this case, the first three consecutive sittings from which Mr Leingkone was absent were those on 10, 16 and 17 August 2023.
30. I turn now to consider whether Mr Leingkone was absent from Parliament on 10, 16 and 17 August 2023 without having obtained from the Speaker, or in his absence, the Deputy Speaker, the permission to be or to remain absent.

Did Mr Leingkone obtain from the Speaker permission to be absent from those sittings?

31. In the context of s 2(d), to obtain permission one must first ask for it. In *Natapei v Korman* [2009] VUSC 147, Lunabek CJ stated "*permission means a request from a member and the response from the speaker approving or rejecting the request of absence.*" On appeal, the Court of Appeal in *Korman v Natapei* at para. 35 confirmed the Chief Justice's interpretation.
32. I preface my discussion of this evidence with the proviso that the critical words of s 2(d) are "*obtained from the Speaker ... the permission ...*". It is possible to obtain something without asking for it, but it is more likely to be obtained if one asks. In the context of the significant consequences if s 2(d) is triggered, it makes sense that a Member would explicitly request the Speaker's permission in order to obtain it. This preserves the transparency necessary for the orderly conduct of Parliament.

Did Mr Leingkone request the Speaker's permission to be absent from Parliament on 10, 16 and 17 August 2023?



33. Mr Ngwele submits Mr Leingkone requested permission from the Speaker to be absent from the sittings of Parliament on 10, 16 and 17 August 2023, and that his requests complied with Standing Order 96 and the usual practice of Parliament.

34. Mr Leingkone wrote four letters dated 7 July 2023, 11 August 2023, 17 August 2023, and 31 August 2023, all addressed to the Speaker. I will describe each in turn.

The letter dated 7 July 2023

35. The letter dated 7 July 2023 contains the heading: "Re: permission to be absent from the extra ordinary seating." Mr Leingkone writes, "Mr Speaker and Mr Clerk, I write to inform you on the above matter." The next paragraph states, "I have been travelling to South Korea for my medical treatment and I am still in South Korea until 20th of August 2023. I will be absent from the extra ordinary seating in August (see attached is my medical report from Dr. Willie Tokon)." The underlining is Mr Leingkone's.

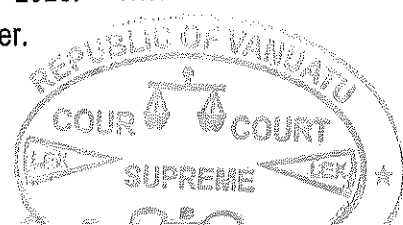
36. In his sworn statement, Reginal Garoleo, at the time the First Political Advisor of the Petitioner, stated that he prepared the letter dated 7 July 2023. In her sworn statement, Elfrida Tamtam said Mr Garoleo sent her the letter and the medical certificate on 7 August 2023. He instructed her to print and deliver the letter and the medical certificate to Parliament immediately. She said she printed both, put them in an envelope, sealed the envelope, and gave it to Sam Tumukon to deliver the letter to Parliament. In his sworn statement, Mr Tumukon said he received the sealed envelope from Ms Tamtam and delivered it to Marie Estelle Rossbong, the receptionist at Parliament on 7 August 2023.

37. Mr Leingkone gave evidence that this letter was delivered on 8 or 9 July 2023. The Speaker gave evidence that the letter was not brought to his attention until 18 August 2023. The letter is stamped "received" on 7 August 2023, and is recorded as having been received by Marie, Parliament's receptionist who does not work in the Speaker's office, at 2pm on 7 August 2023. The medical report from Dr Willie Tokon is dated 8 July 2023 and is not separately recorded as having been received.

38. In his sworn statement, Maxime Banga, the Acting Clerk of Parliament, said the letter of 7 July 2023 did not have a medical certificate attached to it when it was received at Parliament, and the letter was not sent from Parliament's receptionist to the Speaker's office on 7 August 2023. Both the Speaker and the Acting Clerk deposed that they did not see Dr Tokon's medical certificate until they read Mr Leingkone's sworn statement in this proceeding.

The letter dated 11 August 2023

39. In his sworn statement, the Speaker said he received a letter dated 11 August 2023 from Mr Leingkone. This letter was delivered to him by four Members of Parliament. It requested permission for Mr Leingkone to attend the sitting of Parliament on 16 August 2023 so that he could take part in the debate *virtually*. The heading of that letter is "Re: Request to partake in the debate of the Motion of NO Confidence on August 16, 2023." There is no additional request for permission to be absent from Parliament in this letter.



40. The first paragraph of that letter states "*I refer to the above and further to my request to you earlier for leave of absence (due to medical reasons).*" As he was unaware of an earlier request for a leave of absence, the Speaker said he caused a search to be made. In his sworn statement, he said the search revealed that the letter of 7 July 2023 was received by Marie who was the receptionist for Parliament, but the letter was not delivered to the Speaker's office. The Speaker said he did not receive the letter of 7 July 2023 until sometime after the sitting on 17 August 2023. This evidence was not significantly disturbed in cross-examination.

The letter dated 17 August 2023

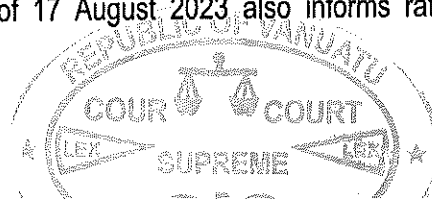
41. Mr Leingkone wrote the Speaker again on 17 August 2023. The letter is headed "*Re; Absence during Second Extraordinary Parliament sitting due to my extended medical treatment in Korea.*" The next sentence states Mr Leingkone wishes "*to inform your high office that I am on Medical treatment in South Korea from 22nd July 2023.*" Although this is written as though this is the first time he informed the Speaker of his medical treatment in South Korea, it is clear the Speaker knew, having been alerted on 11 August 2023, that Mr Leingkone was absent receiving medical treatment. In the penultimate paragraph, Mr Leingkone writes "Therefore I am hereby informing your high office of my extended absence of leave during the Second Extraordinary sitting."
42. In his sworn statement, Sarlo Stephen, then the Second Political Advisor of the Petitioner, wrote that he was instructed by Mr Leingkone to prepare this letter. He sent a draft of the letter by email to Mr Leingkone in South Korea. Mr Leingkone signed the letter and emailed it back to Mr Stephen the same day. He then tried to deliver it to the Speaker in person, but he said the Speaker told him to deliver it to the Clerk of Parliament's secretary.
43. This letter is recorded as having been received by Louise Vere, a secretary in the Clerk's office, at 3pm on 17 August 2023, after the sitting of Parliament had been adjourned that day.

The letter dated 31 August 2023

44. Mr Leingkone wrote the Speaker again on 31 August 2023. This letter is headed "*Re: permission to prolong medical leave and to be absent from extra ordinary Parliament seating.*" He wrote that he needed more medical treatment, "*Therefore I hereby seek your permission to extend my medical stay until the 30th of September 2023 in order to receive further treatment.*" A note from his doctor in South Korea is attached. There is no evidence that it was received, but by that time Mr Leingkone had been absent from four sittings of Parliament.

Discussion of the letters

45. Although the letter of 11 August 2023 refers to an earlier request for permission, it is difficult to construe that earlier letter of 7 July 2023 as a request for permission. It is more in the nature of a letter *informing* the Speaker that he would be receiving medical treatment, rather than *requesting* the Speaker's permission to be absent. The letter of 11 August 2023 did not contain any fresh information or request. The letter of 17 August 2023 also informs rather than



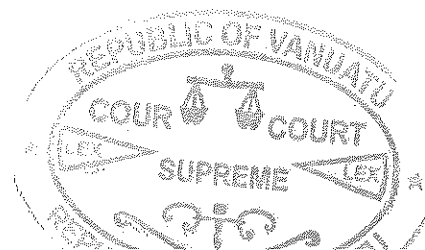
requests. It is not until the letter of 31 August 2023 that Mr Leingkone sought permission of the Speaker "to extend his medical stay."

46. Mr Leingkone said he did not contact the Speaker to follow up his letters of 7 July 2023, 11 August 2023, 17 August 2023 and 31 August 2023. This was not a case of the Member being so sick that he was physically and mentally unable to make a request as was the case in *Boulekone*. He was able to communicate with his staff from South Korea by email, and to authorise letters. He was also a member of a WhatsApp group that included the Speaker. He said he had his phone with him in South Korea. He had the mental and physical capacity to request permission from the Speaker using those methods, but he did not use them for that purpose.
47. I find that Mr Leingkone did not expressly request the Speaker's permission to be absent from Parliament until the letter of 31 August 2023. By that time, Mr Leingkone had been recorded as being absent from Parliament on 10, 16, 17 August 2023.
48. I turn now to the issue of whether or not Mr Leingkone obtained the Speaker's permission to be absent.

Did Mr Leingkone obtain the Speaker's permission to be absent from Parliament on 10, 16 and 17 August 2023?

49. On Mr Leingkone's evidence, the Speaker did not respond to the letters dated 7 July 2023, 11 August 2023, 17 August 2023, and 31 August 2023. It is also the Speaker's evidence that he never gave Mr Leingkone permission to be absent from Parliament.
50. Mr Ngwele submitted that the Speaker's permission can be inferred from his lack of objection to Mr Ngwele's absence in the knowledge that Mr Leingkone was undergoing medical treatment overseas, and from the fact that Mr Leingkone continued to receive a sitting allowance under Standing Order 96 while he was absent on 10, 16 and 17 August 2023.
51. The Speaker had knowledge that Mr Leingkone was absent from Parliament on 10, 16 and 17 August 2023. These absences are recorded in Hansard. The Speaker was alerted to the fact that Mr Leingkone was absent receiving medical treatment when he received the letter of 11 August 2023 on 11 August 2023. I am less sure about when the Speaker saw Dr Tokon's medical certificate, but sighting a medical certificate is not a precondition to granting or refusing permission under s 2(d). The medical certificate is only relevant to Standing Order 96, which requires a Member to present a medical certificate to the Clerk when the Member asks the Speaker to excuse him from a sitting. A medical certificate is also necessary under that Standing Order to obtain a sitting allowance. Presenting a medical certificate to the Clerk does not however impose an obligation on the Speaker to grant permission and it does not mean the Speaker has granted permission in terms of s 2(d).

The relevance of the Speaker's knowledge



52. Mr Ngwele submitted that the Speaker's permission can be inferred from his lack of objection to Mr Leingkone's absence overseas. Mr Ngwele also submitted that the Speaker was under an obligation to inquire about Mr Leingkone's state of health once the Speaker knew, from the reference in the letter of 11 August 2023, and certainly by 16 August 2023 based on his statement in Parliament that day,¹ that Mr Leingkone was absent receiving medical treatment. I disagree. These submissions reverse who has an obligation to establish a case to be absent from Parliament and they are inconsistent with what is required by s 2(d).
53. Section 2(d) requires the Member to "obtain" permission. One obtains *something*. The ordinary meaning of the verb requires a tangible or intangible object. In the absence of any response from the Speaker, Mr Leingkone obtained nothing. To obtain something from someone in the context of s 2(d) requires more than silence. Even if Mr Leingkone had made a request in time, he obtained nothing but silence from the Speaker.
54. The onus is on the person seeking leave to request it with reasons and evidence to support the request. Had a formal request been made (and such a request could have been made orally or in writing: *Korman v Natapei* [2010] VUCA 14 at para 43, or I would venture to say these days, by texting, messaging or via social media) it is for the person requesting permission to pursue his case to obtain what is required. The Speaker's knowledge that a Member is receiving medical treatment overseas, even with supporting evidence, is insufficient to create an assumption that permission has been granted in terms of s 2(d), and it does not create an obligation on the Speaker to grant permission.
55. Nor is there an obligation on the Speaker to extract supporting evidence supporting the request for permission from the person requesting permission. In this case, regardless of when the Speaker received a medical certificate, the request for permission was not explicitly made until 31 August 2023, and was in any event after Mr Leingkone missed three consecutive sittings.
56. Mr Ngwele also submitted that with this knowledge, and before he made his statement in Parliament, natural justice required the Speaker to inform Mr Leingkone that he intended to tell Parliament that Mr Leingkone's seat was vacant, and give Mr Leingkone an opportunity to address the proposed statement. This submission would have more force if it was the Speaker's decision that caused the seat to become vacant, but that is not the case. It is the operation of s 2(d) that causes the vacancy; the Speaker merely announces what the law has already done. It is also difficult to know what Mr Leingkone could have told the Speaker that both of them did not already know.
57. This point has been considered in the Supreme Court and Court of Appeal. In *Shadrack v Simeon* [2019] VUSC 173, Saksak J considered the whether the Speaker had an obligation to respond to a letter explicitly seeking permission to be absent. His Lordship said at para 59, "*the Speaker had no obligation under s 2(d) of the Act to take any other procedural step, for instance to respond to the letter or to give him the opportunity to be heard.*" In *Korman v Natapei* [2010] VUCA 14, the Court of Appeal said at para. 20 "*it is not appropriate to seek to*

¹ I do not accept the Speaker's claim that he did not say this and that Hansard was somehow altered. The reference is part of the official record and as such is authority for what was said in Parliament.



apply the rules of natural justice with reference to the Respondent being given a right to be heard prior to the Speaker making a decision under Section 2(d)" and again at para 23 "we do not construe Section 2(d) as requiring the observance of the principles or rules of natural justice in every circumstance in which a member's seat in Parliament is vacated."

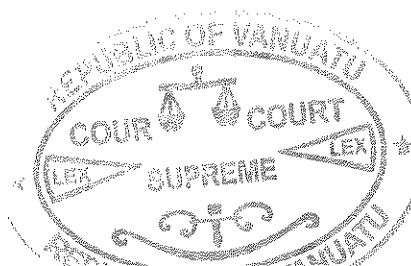
58. I do not consider therefore that there was an obligation on the Speaker to inform Mr Leingkone in advance of his intention to announce the vacancy. In any event, the Speaker wrote to Mr Leingkone on 11 September 2023 informing him his seat was vacated. I accept the Speaker's evidence that service of this letter was attempted twice before it was handed to Mr Leingkone on the morning of 25 September 2023 when Mr Leingkone was present in Parliament.

Standing Order 96 and parliamentary practice

59. In his "outline of submissions for the petitioner" Mr Ngwele submitted "*compliance with Standing Order 96 requires the Speaker to grant permission, without necessitating an exercise of discretion by the Speaker.*" He submitted "*the effect of the Standing Order is that the Speaker must grant permission to applications meeting the requirements of the Standing Order.*" Mr Leingkone gave evidence consistent with this submission. He said it was his understanding that once a medical certificate was given to the Clerk, the Speaker's permission to be absent could be assumed in the absence of any contrary indication. This is why the date on which the Speaker received a medical certificate was so hotly disputed. The assumption is however, unfounded, both in terms of Standing Order 96, and s 2(d) of the Act.
60. Mr Leingkone gave evidence of this Parliamentary practice or understanding based on Standing Order 96. Standing Order 96 provides as follows:

Attendance of Members of Parliament

96. (1) *A member may be excused by the Speaker from attending a sitting of Parliament on the grounds of illness. The Member is required to present a medical certificate from a registered medical practitioner to the Clerk to justify his or her absence.*
- (2) *Provided the Member has produced a medical certificate required under paragraph (1), the Member is entitled to receive the sitting allowance for the days covered by the medical certificate.*
- (3) *The Speaker may grant a Member permission to be absent from attending a sitting of Parliament on account of other family cause of a personal nature and the Member is entitled to receive the sitting allowance for such days determined by the Speaker.*
- (4) *The Member's absence under this Standing Order is to be recorded in the Minutes of Proceedings as being absent with permission of the Speaker on account of illness or other family cause of a personal nature, which for the avoidance of doubt, such period of absence must not exceed a period of three (3) months.*



(5) *A Member who is absent without cause or prior permission of the Speaker must forfeit his or her entitlement to any of the allowances payable for such days of absence.*

61. Standing Order 96 is permissive. It gives a discretion to the Speaker to excuse a Member from "a" sitting, whereas s 2(d) requires absence from three consecutive sittings without permission. The Speaker *may* excuse a Member from attending a sitting of Parliament on the grounds of illness, but he does not have to. Submitting a medical certificate to the Clerk does not create an obligation on the Speaker to exercise his discretion in a manner favourable to the Member. On the words of the Order, even when a medical certificate has been submitted to the Clerk, the Speaker may decline or refuse to excuse the Member. May is still may.
62. For this reason, no inference can be drawn from the fact that Mr Leingkone received a sitting allowance for the days he was absent from Parliament. Receiving a sitting allowance does not mean the Speaker has granted permission to be absent. Both the Speaker and the Acting Clerk said the payment of a sitting allowance is an administrative matter, and the Speaker is not involved in the approval of allowances. This is consistent with the words of Standing Order 96(2), which states that "*provided the Member has produced a medical certificate required under paragraph (1), the Member is entitled to receive the sitting allowance for the days covered by the medical certificate.*" The sitting allowance is not relevant to whether or not the Speaker has exercised his discretion in Standing Order 96(1) to excuse a Member from attending a sitting of Parliament.
63. Further, Standing Order 96, and any parliamentary practice that has grown up around it, cannot displace the words of s 2(d). This point was considered by the Court of Appeal in *Korman v Natapei* [2010] VUCA 14 at paras 28 and 29:

28. We accept that both the Standing Orders and established "practice and procedure of parliament" may be seen as complementing the provisions of the Section and, in limited circumstances, could assist in its interpretation, but, before such an extraneous aid can be resorted to, there must be a clear lacuna or ambiguity in the Section and the interpretative aid must itself be clear and unambiguous in its meaning and ambit. Finally it must not be inconsistent with the clear wording and intention of the statutory provision being construed.

29. After careful deliberation we unanimously reject counsel's submission that the above-mentioned "practice and procedure" dealing with the giving of written notice to the Speaker of a member's intention to be absent from a sitting of Parliament can be prayed in aid of construing the Section.

64. The Court of Appeal in *Korman* also specifically addressed the relevance to s 2(d) of this parliamentary practice of assuming a grant of the Speaker's permission:

32. Equally, such absenteeism may or may not be with the permission of the Speaker and a "practice and procedure of parliament" that merely pre-supposes the grant of the Speaker's permission without more is inconsistent with the clear requirement of the Section that the absentee member must have "... obtained from the Speaker (his) ... permission to be absent."



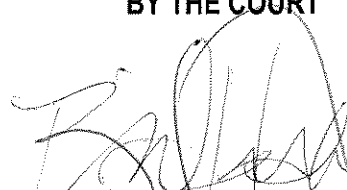
65. Mr Ngwele urged caution in applying judgments written before the Standing Orders were amended in 2020, but *Korman's* case concerned similar parliamentary practice, and its observation that there must be an ambiguity in a statute before external interpretative aids can be brought to bear to resolve the ambiguity is a well-established principle of statutory interpretation applied to the same provision that is under consideration in this case.
66. On the evidence, I find that Mr Leingkone did not obtain explicit permission from the Speaker to be absent from Parliament on 10 August 2023, 16 August 2023 and 17 August 2023. I find that no inference that the Speaker gave permission for Mr Leingkone to be absent from Parliament on those dates can be drawn from the Speaker's knowledge of Mr Leingkone's absence overseas to receive medical treatment. I find that no inference that the Speaker gave permission for Mr Leingkone to be absent from Parliament on those dates can be drawn from Standing Order 96 or parliamentary practice.
67. I find therefore that Mr Leingkone did not obtain from the Speaker permission to be absent from Parliament on 10, 16 and 17 August 2023 as is required to avoid the operation of s 2(d) of the Act.

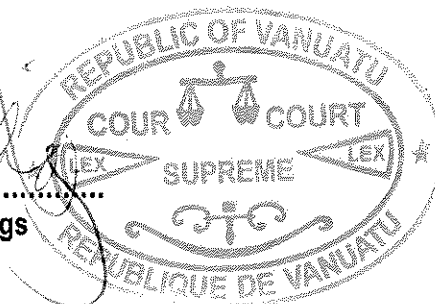
Result

68. I find Mr Leingkone was absent from three consecutive sittings of Parliament on 10, 16 and 17 August 2023 without having obtained from the Speaker permission to be absent in terms of s 2(d) of the Members of Parliament (Vacation of Seats) Act.
69. The petition, including its request for declarations, is dismissed.
70. I confirm the Speaker's declaration that Mr Leingkone's seat is vacant.
71. Costs are awarded to the respondents and are to be taxed if they are not agreed.

Dated at Port Vila this 2nd day of October 2023

BY THE COURT


.....
Justice W.K. Hastings



The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a sword. The text 'REPUBLIC OF VANUATU' is written along the top inner edge, and 'REPUBLIQUE DE VANUATU' along the bottom inner edge. In the center, the words 'COUR' and 'COURT' are on either side of the scale, and 'SUPREME' is below it. The word 'LEX' appears on two small banners flanking the central text. A small star is located on the right side of the seal.