

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

**Constitutional  
Case No. 24/3739 SC/CNST**

**BETWEEN:** GRACIA SHADDRACK, ALATOI ISHMAEL  
KALSAKAU, SILAS MELVE BULE, JAY  
NGWELE, ULRICH SUMTOH, ANATOL HYMAK,  
JEAN BAPTISTE TAMA, MARC MUELSUL,  
BLAISE SUMTOH  
First Applicants

**AND:** SAMUEL ANDREW KALPOILEP, JESSE LUO,  
ANTHONY HARRY, NAKO NATUMAN, GLORIA  
JULIA KING, ANATOL HYMAK, JACK WONA,  
LULU SAKAES, JUSTIN NGWELE, BASIL  
BULEBAN, SILAS BULE, MELTEK SATO  
KILMAN LIVTUNVANU  
Second Applicants

**AND:** BOB LOUGHMAN WEIBUR, DON KEN, MARC  
ATI, CAMILLO ATI, JOHN STILL TARIQUTU,  
PETER TURA, JAMES BULE  
Third Applicants

**AND:** MOLI NIKENIKE VUROBARAVU MOLINAVANUA  
acting in the capacity of the President of the  
Republic of Vanuatu  
First Respondent

**AND:** CHARLOT SALWAI TABIMASMAS in his  
capacity as the Prime Minister of the Republic of  
Vanuatu  
Second Respondent

**AND:** SPEAKER OF PARLIAMENT  
Third Respondent

**AND:** REPUBLIC OF VANUATU  
Fourth Respondent

**Date of Hearing:**

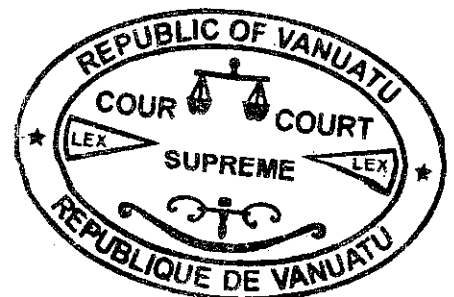
10 December 2024

**Coram:**

Hon. Chief Justice Vincent Lunabek

**Counsel:**

A Godden and S Kalsakau for all the Applicants



*MJ Hurley for the First Respondent  
DK Yahwa for the Second Respondent Caretaker Prime Minister  
FW Samuel and L Huri for the Third and Fourth Respondents*

Date of Judgment: 13 December 2024

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## JUDGMENT

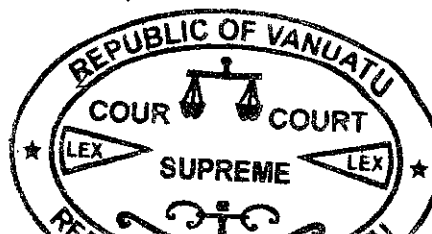
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### I. Introduction

1. The President of the Republic of Vanuatu acting on the advice of the Council of Ministers (COM), dissolves the National Parliament on 18 November 2024. The effect of that dissolution is that the life of Parliament came to an end and so were the terms of members of Parliament.
2. The Applicants who were members of Parliament prior to the dissolution now challenge the decision of the President to dissolve Parliament by filing an Urgent Constitutional Application on 21 November 2024. The urgent Constitutional Application was made against the President of the Republic as the First Respondent, the Prime Minister of the Republic of Vanuatu as the Second Respondent, the Speaker of the National Parliament of the Republic of Vanuatu as the Third Respondent and the Republic of Vanuatu as the Fourth Respondent [In this Constitutional Application, the sole and principal Respondent is the Republic of Vanuatu pursuant to Rule 2.9 of the Constitutional Rules 2003].

### II. Grounds of the Application

3. The Applicants were 28 former members of Parliament. The Applicants alleged that on 7 November 2024, whilst Parliament was convened for its second ordinary session, the First and Second Applicants deposited with the Speaker, the Motion to Remove the President pursuant to Articles 34(1), (2), 36(2), (3) and (4) and schedule 1 of the Constitution of the Republic (The "*Motion to impeach the President of the Republic of Vanuatu*") (Motion No. 7 of 2024). The First Applicants said that on 12 November 2024, they signed and deposited with the Speaker, the Motion of No-Confidence in the Prime Minister of the Republic of Vanuatu – Motion No. 8 of 2024.
4. The Applicants said that on 12 November 2024, the Speaker, in a press release:
  - a) Confirmed receipt of the Motion to impeach the President and the Motion of No-Confidence in the Prime Minister;

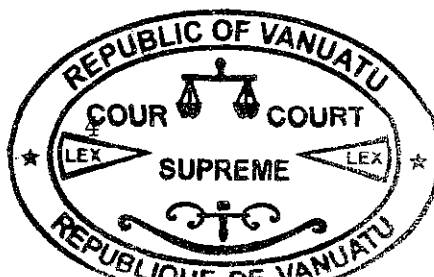


- b) Confirmed that the two Motions were in accord with their respective constitutional requirements;
  - c) Stated that steps had been taken to summon the 58 members of the Electoral College to deliberate on the Motion to impeach the President "*within the two weeks' timeframe*" (i.e. by Friday 22 November 2024);
  - d) Stated that the Motion of No-Confidence in the Prime Minister was to be tabled, debated and voted on by Parliament on 19 November 2024.
5. On Monday 18 November 2024, the following events occurred:
- a) The Speaker adjourned Parliament due to lack of a quorum until the next day;
  - b) Subject to the said adjournment of Parliament the Applicants issued a public statement that they now commanded the majority of the members of Parliament;
  - c) At approximately mid-day the same day, the Council of Ministers met and resolved to advise the President to dissolve Parliament;
  - d) Upon learning of the said resolution, the Applicants attended at the Supreme Court Registry at around 3:50pm to notify the Chief Registrar that they would be making an urgent oral application to restrain the President from dissolving Parliament;
  - e) At about 4:30pm, the President signed the Instrument of Dissolution of Parliament dated 18 November 2024.
6. The Applicants said by signing the Instrument of dissolution in the circumstances described above, the President contravened Article 66(1) and (2) of the Constitution in that he:
- a) Placed himself in a position in which he had a conflict of interest or in which the fair exercise of his public or official duties might be compromised;
  - b) Demeaned his office and position;
  - c) Allowed his integrity to be called into question;
  - d) Endangered or diminished respect for and confidence in the integrity of the Government of Vanuatu; and

- e) Used his office for personal gain in such way as might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by Article 66(1).
7. The Applicants said when the First Respondent dissolved Parliament, the rights of the Applicants were breached by:
- a) The First Respondent, as a leader under Article 67, placing himself in a position in which he had a conflict of interest or which the fair exercise of his public or official duties have been compromised, contrary to and in breach of Article 66(1)(a);
  - b) Denying and depriving the Applicants as members of Parliament and the Electoral College, the right to bring, prosecute, debate and vote on the motion they had lodged pursuant to Article 36(2) to impeach the First Respondent (President of the Republic);
  - c) Breaching the rules of natural justice and fairness;
8. The Applicants said the decision of the First Respondent to dissolve Parliament is unlawful, irrational, biased and a flagrant abuse of power in that:
- a) The First Respondent was denying the Electoral College, the right to deliberate and vote on the first motion;
  - b) The First Respondent has placed himself in a position in which he has a conflict of interest or in which the fair exercise of his public or official duties have been compromised which is contrary to Article 66(1)(a) of the Constitution;
  - c) The First Respondent would personally gain from the dissolution by continuing to hold on to power.

### III. Relief sought in the Urgent Application

9. The Applicants applied for the following declarations and orders:
- (a) A declaration that the dissolution of Parliament (Dissolution) by the First Respondent and the instrument of dissolution dated 18 November 2024 (Instrument) by the First Respondent are void and unconstitutional;



- (b) An order that the Speaker to forthwith convene the Electoral College pursuant to Articles 34 and 36 of the Constitution to deliberate and vote on the Motion to remove the President (Motion No. 7 of 2024); and
- (c) A declaration that Parliament is still in session and seized the outstanding business, including to vote without delay the motion of no confidence in the Prime Minister dated 12 November 2024 (Motion to No. 8 of 2024); and
- (d) Costs.

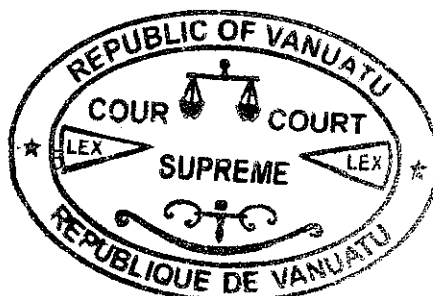
**IV. The sworn statements filed in support of the Urgent Application**

- 10. The Applicants filed and served 31 sworn statements in support of the application. The statements were filed on the following dates by following deponents:
  - (i) On 21 November 2024, following statements are filed by: Gracia Shadrack, Alatoi Ishmael Kalsakau, Marc Ati, Don Ken, Bob Loughman Weibur, Justin Ngwele, Silas Melve Bule, Jay Ngwele, Sato Kilman Livtunvanu, Ulrich Sumptoh; Jean Baptiste Tama, Marc Muelsul, Blaise Sumptoh, Anatole Hymak, James Bule, Camillo Ati, Peter Tura, Gloria Julia King, John Nill Roy, Nako Natuman, Jack Wona, Samuel Andrew Kalpoileb, Kalmer Kalwatman, Basil Buleban, John Still Tariquetu, Lulu Sakeas; and on 26 November 2024, Gracia Shadrack and Jay Ngwele filed each additional statements.

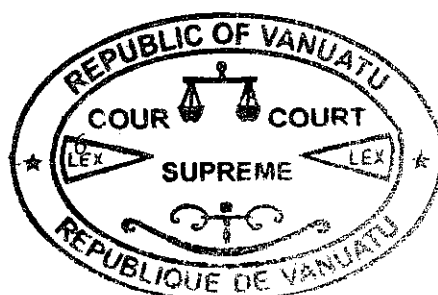
**V. The Responses to the Urgent Applications**

**1. The First Respondent's Response to the Application**

- 11. The First Respondent filed a response to the Application on 2 December 2024. The First Respondent said as follows:
  - a) That the Motion No. 7 of 2024 to move the Electoral College to resolve to pass a motion to remove the First Respondent is a nullity because it did not comply with the requirements of Article 36(2) of the Constitution in that:
    - (i) The Electoral College, as provided for under Article 34 of the Constitution, had not been convened for the purpose of Article 36(2) of the Constitution;



- (ii) The Electoral College is comprised of 58 members, being the 52 Members of Parliament together with the President of the 6 Provincial Government Councils (that is, the 6 Provincial Government Councils); and
  - (iii) Contrary to Article 36(2) the Motion was not introduced by at least one-third of the members of the Electoral College, instead, it was signed by 19 Members of Parliament, being less than the one-third members of the Electoral College, and introduced in Parliament.
- b) The First Respondent says that to the extent that the Speaker stated that the Motion accorded with constitutional requirements, that was an error by the Speaker as the Motion referred to is a nullity;
- c) The First Respondent says that on 18 November 2024 at approximately 4pm he received a letter signed and delivered by the Prime Minister, Hon. Charlot Salwai Tabimasma, dated 18 November 2024 captioned: *"Advice of the Council of Ministers to Dissolve Parliament"*, attaching the unanimous resolution of the Council of Ministers to advise the First Respondent to dissolve Parliament in accordance with Article 28(3) of the Constitution;
- d) The First Respondent signed the instrument of dissolution of Parliament at approximately 4:33pm on 18 November 2024;
- e) The First Respondent denies the allegations that he contravened Article 66(1) and (2) of the Constitution in relation to the Applicants; and he further says that:
- (i) It was within the First Respondent's wide discretion under Article 28(3) of the Constitution to decide to dissolve Parliament once he received the Council of Ministers advice on 18 November 2024 to do so;
  - (ii) The purported Motion is a nullity, and therefore there is no issue of the alleged contravention of Articles 66(1) and (2) arises; and
  - (iii) If the purported Motion was valid, no issue of the alleged contravention of Articles 66(1) and (2) arises because the First Respondent's discretion enshrined in Article 28(3) is separate and distinct from any consideration about a pending Motion under Article 36(2).
- f) The First Respondent admits that the Applicants are members of Parliament, members of the Electoral College and citizen of the Republic; but there was no breach of the Applicants' rights under Article 5(1)(d) that had occurred;

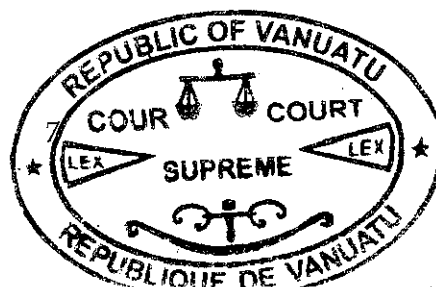


- g) The First Respondent denies that when he dissolved Parliament, the rights of the Applicants under Articles 66 and 36(2) of the Constitution were breached;
- h) The First Respondent denies that the decision of the President to dissolve Parliament on 18 November 2024 is unlawfully irrational, biased and a flagrant abuse of power.

## **2. The Second Respondent's Response to the Application**

12. The Second Respondent filed a response to the Application on 3 December 2024 and said the following:

- a) The Motion No. 7 of 2024 to impeach the President of the Republic is a nullity because it did not comply with Article 36(2) of the Constitution;
- b) The Second Respondent says that the Speaker made an error to rule that the Motion to impeach the President was in order as the Speaker does not have that constitutional authority to make that ruling as he is not the chairman of the Electoral College, nor does the Speaker have the constitutional authority to summon 58 members of the electoral college;
- c) The Second Respondent says that the Council of Ministers made an unanimous decision to advise the President to dissolve Parliament and it was not him personally;
- d) The Second Respondent says he admits that the President dissolved Parliament on 18 November 2024 but he does not know at what time the President signed the instrument of dissolution;
- e) The Second Respondent says that the President was obliged to act on the request of the Council of Ministers as a matter of the President's constitutional duty to act in the national interest of the Republic;
- f) The Second Respondent says that whether the rights of the Applicants are breached the Applicants must show that their rights afforded under Article 5(1) (2) of the Constitution are infringed;
- g) The Second Respondent says that the power of the President to act on the advice of the Council of Ministers is wide;

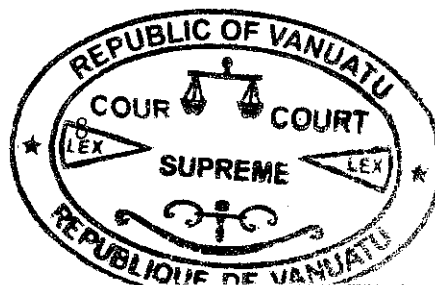


- h) The Second Respondent says in relation to paragraph 20 of the grounds of the Application that it was an attack on the conduct of the First Respondent, there was no cause of action against him (Second Respondent) and the claim against him should be dismissed with costs.

**3. The Third and Fourth Respondents' Responses to the Application**

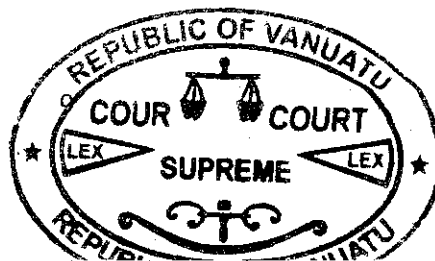
13. The Third and Fourth Respondents filed responses to the Application on 2 December 2024 and they say as follow:

- a) The Third and Fourth Respondents say that unless the Court orders pursuant to Constitutional Procedures Rules (CPR), the parties to a Constitutional Application are the applicants and the Republic of Vanuatu;
- b) The Third and Fourth Respondents say that the Applicants' status as Members of Parliament ceased upon the dissolution of Parliament on 18 November 2024 and that the Motion to remove the Prime Minister, Motion No. 8 of 2024 dated 12 November 2024, speaks for itself and will rely on it for its full terms and effect;
- c) The Third and Fourth Respondents say that:
- (i) The named First, Second, Third and Fourth Respondents speak for themselves;
  - (ii) The President had a Constitutional role to play and it is inappropriate for the President to give evidence or to become involve as an active party in this proceeding and will rely on the case of *Vohor v Abiut* [2004] VUCA 1; civil Appeal Case No. 05 of 2004 and Constitutional Procedure Rules (the "Rules") (Rule 2.4) for their full terms and effect;
  - (iii) Pursuant to Rule 2.4, the Respondent in a Constitutional Application is the Republic of Vanuatu and the Court may order a person to be legally represented; and
  - (iv) In the normal course of Constitutional Application, the Court in this proceeding can make orders for the position holder to abide the orders of the Court (*Vohor* case);
- d) They admit and say they will rely on the Summons for Parliament to meet in its 2024 Second Ordinary Session commencing on 7 November 2024 at 8:30am for its full terms and effect;

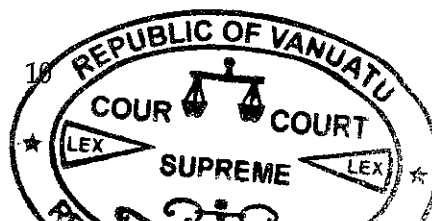




- e) In response to ground 9 they say that, except that the Motion No. 7 – Motion to move the Electoral College to resolve to pass a motion to remove the President of the Republic Motion No. 7 was signed by 19 Members of Parliament and served on the office of the Speaker on 7 November 2024 at 5:06PM, denies that the same was introduced in compliance with Article 36(2) which requires being introduced by one-third of the electoral college and otherwise says the purported Motion speaks for itself;
- f) They say that the Motion No. 8 of 2024 – Motion to move the Parliament to resolve to pass a motion of no confidence in the Hon. Prime Minister was served on 12 November 2024;
- g) They say that in response to ground 11, except that the President's exercise of powers under Article 28(3) of the Constitution is independent and not subject to the internal proceedings of Parliament or any ruling of the Speaker of Parliament, the Press Release dated 12 November 2024 speaks for itself;
- h) They admit grounds 12 and will rely on the terms and effect of the Minutes of the proceedings (the Minutes) of 18 November 2024 which recorded that Parliament was adjourned on 18 November 2024 due to lack of quorum;
- i) They say that they do not know and do not admit ground 13, except they say that the Applicants public statement does not prevent the President exercise of its powers under Article 28(3) to dissolve Parliament on the advice of the Council of Ministers;
- j) They say that in response to ground 14, the COM was called to meet at 11:30AM on 18 November 2024 and will rely on the COM decision No. 338 for its full terms and effect;
- k) In response to ground 15, they say that except that the President has a wide discretionary power under Article 28(3) to dissolve Parliament on the advice of COM and is not subject to any other person's or position holder's discretion, do not plead to the ground;
- l) In response to ground 16 they say that the Office of the Attorney General published in the Gazette No. 9 of 2024 the Instrument of dissolution of Parliament (Gazette No. 9) on 18 November 2024 and will rely on the Gazette No. 9 for its full terms and effect;
- m) As to grounds 17, they say that:

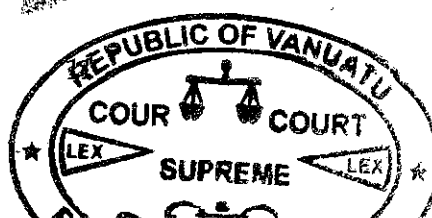


- (i) The President of the Republic under the Constitution had powers including a wide discretionary power to dissolve Parliament on the advice of the COM and will rely on Article 28(3) for its full terms and effect;
  - (ii) The fact that there is a Motion against the Prime Minister and a Motion to remove the President do not stop the President exercise of his powers under Article 28(3) to dissolve Parliament on the advice of COM;
  - (iii) Unless the decision made by the President in exercise of his functions under the Constitution not irrational and unsustainable or he was not acting in a conflict-of-interest situation under Article 66 in his performing of the functions, his actions cannot be challenged and will rely on the past case authorities in regards to President exercise of discretion under Article 28(3) and Article 66 for their full terms and effect;
  - (iv) The Motion No. 7 to remove the President and pending debate in Parliament is a business for the Parliament, however:
    - (a) Pursuant to the instrument of dissolution Parliament ceased existence on 18 November 2024 until it is formed after the election as per Article 28(4) of the Constitution; and
    - (b) The Motion falls short of the requirements under Article 36(2) in terms of introducing the Motion.
  - (v) The Court of Appeal had held in earlier cases that a motion of no confidence would not have priority over the Constitutional right of the President to dissolve Parliament under Article 28(3):
    - 1) President of Republic of Vanuatu v Korman & Ors. [1998] VUCA 3; Civil Appeal Case No. 8 of 1997 (Korman's case);
    - 2) Vohor v Abiut [VUCA 1] Civil Appeal 5 of 2004
  - (vi) the intent and purpose of Article 28(3) of the Constitution is to allow the process enshrined under Article 4 of the Constitution for the people of the Republic of Vanuatu to democratically express their view in an election of a new Parliament and which must take priority over Article 43 of the Constitution and will rely on the said Articles for their full terms and effect;
  - (vii) any dissolution pursuant to Article 28(3) has the consequential effect of all members of Parliament ceasing to be Members of Parliament and that includes the Prime Minister and Ministers;
- n) As to grounds 18, 19 and 20, they say: -

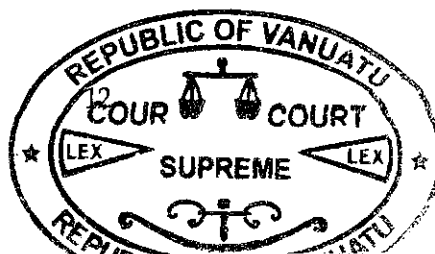


- a) the right which members of Parliament have under Article 43 exist only if Parliament exists and it (Art 43) is not one of those Articles specifically covered by Articles 5 and will rely on earlier cases including the Korman case for its full terms and effect in respect to Members of Parliament exercise of powers under Articles 43 and the President's powers under Article 28 (3);
  - b) the right which the members of Electoral College, (consist of Parliament and the President of the Provincial Government Councils) has under Article 34 (1) and 36 (2) exists only if Parliament exists and these rights are not those specifically covered by Articles 5 and will rely on Articles 34 (1) and 36 (2) for their full terms and effect;
  - c) Article 5 of the Constitution provides for the fundamental rights and freedoms of individuals and subject to the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health;
  - d) Article 5 (1)(d) provides for the protection of the law for the Applicants as individuals and will rely on this Article for its full terms and effect;
  - e) the rights under Articles 43, 34 (1) and 36 (2) are qualified rights as Members of Parliament and Electoral College respectively;
  - f) On the basis of paragraphs in (a) to (e) above, they deny any breaches of the Applicants' individuals rights under Article 5 (1) (d) and even so the rights under Article 34 (1) and 36 (2) are qualified rights and not absolute rights so could found their purported claim for breach of their fundamentals rights and freedom under Article 5;
  - g) the Applicants have misconstrued the Articles of the Constitution to claim that their rights under Article 5 (1) (d) and any rights under Article 5 has been infringed in relation to them in that they were not given the opportunity to debate the motions against the Prime Minister and the President following the President dissolving Parliament on the advice of COM;
- o) In response to ground 21 they say that in reliance on the above paragraphs, the Constitutional Application is a demonstration of:
- a) A misinterpretation of the relevant Articles of the Constitution;
  - b) The misunderstanding of the relevant Articles of the Constitution;
  - c) The applicants misconstruing of the Articles of the Constitution;

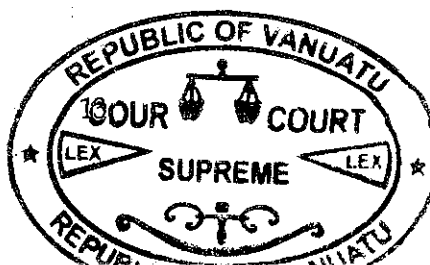
And accordingly, it is without basis and must be dismissed in its entirety with costs.



- p) In further response to the Constitutional Application, they say:-
- a) The President of the Republic has wide discretionary power under Article 28 (3) to exercise to dissolve Parliament on the advice of the COM;
  - b) On 18 November 2024, upon receiving advice from the COM, the President of the Republic of Vanuatu exercised his discretion under Article 28 (3) dissolved Parliament;
  - c) Provided the decision made by the President in exercise of his functions under the Constitution is not irrational or unsustainable or he was not acting in a conflict-of-interest situation under Article 66 in his exercise of discretion to dissolve Parliament under Article 28 (3) on 18 November 2024, his actions cannot be challenged and will rely on Article 66 and Article 28 (3) for their full terms and effect;
  - d) The rights to debate the motions are under Article 43, 34 (1) and 36 (1) respectively in the circumstances, however nowhere in the Urgent Constitutional Application, are there pleadings on allege breach of Article 43, and further say that even if pleaded the Applicants are no longer Members of Parliament to claim such right and rights under articles 34 (1) and (36);
  - e) The rights under Articles 43, 34 (1) and 36 (1) are qualified rights and not absolute rights, and the Applicants are privy to those rights only as Members of Parliament and not as ordinary individuals and their rights as Members of Parliament ceased on 18 November 2024 when the President of the Republic dissolved Parliament;
  - f) Except for the facts pleaded on the two Motions, against the President and the Prime Minister respectively and are in order for debate in Parliament, the Constitutional Application lacks any other facts that would justify that the President of the Republic has a conflict of interest when he exercised his discretion under Article 28 (3) to dissolve Parliament on the advice of the COM;
  - g) The fact that the two Motions are in order for debate in Parliament, to remove the President of the Republic and the Prime Minister respectively do not stop the President exercising its powers under Article 28 (3) to dissolve Parliament;
  - h) At all material times the COM was competent to meet and make decisions independently of the business of Parliament and that the exercise of executive power of the people by the COM was pursuant to and in line with Article 39(1) of the Constitution;



- i) The decision to advise the President to dissolve Parliament under Article 28(3) is a collective decision of the COM and not the Prime Minister;
- j) Article 28 (3) empowers the President a wide discretionary power to dissolve Parliament and the consequential effect of dissolution is that all members of parliament and that includes Prime Minister and the Ministers;
- k) The intent and purpose of Article 28 (3) of the Constitution is to allow the process provided under Article 4 of the Constitution for the people of the Republic of Vanuatu to democratically express their view in an election of a new Parliament and which takes priority over Article 43 2) and will rely on the Articles for their full terms and effect;
- l) In its decision dated 18 November 2024, the COM advised the President to dissolve Parliament and on the same date the President of the Republic in exercise of its powers under Article 28 (3) dissolved Parliament;
- m) The fore knowledge by Members of the COM and the President of the Republic of Vanuatu of the pending motions of no confidence (in Parliament) in the Prime Minister and the President is not wrong in law and is not unconstitutional;
- n) Further that the fore knowledge by members of the COM and the President of the pending motions of no confidence (in Parliament) in Prime Minister and President respectively do not and cannot prevent the COM from exercising the executive power of the people vested, in the COM by Article 39 (1) and in the President by Article 28 (3) respectively;
- o) The effect of what the Court of Appeal in *Korman's case and Vohor v Abiut* is that the COM to advise the President to dissolve Parliament take priority or overrides that rights of Members of Parliament to attend Parliament or to debate a motion of no confidence against the Government and the right of people of Vanuatu to democratically express their view in the election of a new Parliament must be accorded priority;
- p) The Applicants filed their urgent Constitutional Application on 21 November 2024 after the dissolution of Parliament;
- q) On the basis that the Parliament has been dissolved, the Applicants are no longer Members of Parliament nor members of Electoral College accordingly any purported claim for breach of rights under Articles 43 (2), 34 (1) and 36 (2) is unfounded and without merit;



- r) The facts that the two motions to remove the President and the Prime Minister are pending debate in Parliament is a matter of business for the Parliament and not for the President; and
- s) On the basis of the above paragraphs, the Constitutional Application lacks any merits and must be dismissed in its entirety with costs.

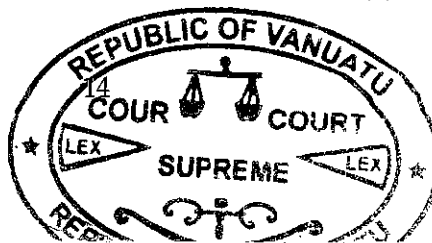
**VI. The sworn statements filed in support of the Responses to the Urgent Application**

14. The Respondents filed and serve the following three (3) sworn statements in support of their responses to the Application on 2 December 2024 (sworn statements of Maxime Banga, Esther Rory and Joe Natuman Junior):

**1. Sworn Statement of Maxime Banga, Clerk of Parliament**

15. The Clerk of Parliament deposed and attached the following documents:

- (i) The summonses issued by the Speaker of Parliament to meet for its 2024 Second Ordinary Session commencing on 7 November 2024 and marked as "MB1";
- (ii) The Motion No. 7 of 2024 to move the Electoral College to resolve to pass a Motion to impeach the President of the Republic and marked as "MB2"; the Speaker received the Motion No. 7 of 2024 on 7 November 2024;
- (iii) The Motion No. 8 of 2024 to move Parliament to resolve to pass a Motion of No-Confidence in the Prime Minister and marked as "MB3"; the Speaker received Motion No. 8 of 2024 on 12 November 2024;
- (iv) The Press Release by the Speaker of Parliament dated 12 November 2024 – in essence, the Speaker said he received a Motion to remove the President on 7 November 2024 – the Motion was signed by 19 Members of Parliament. In consultation with the Electoral Commission, steps have been initiated to issue summons to the 58 members of the Electoral College. A session to deliberate on the motion will be organized "*within the required two-week*" timeframe. On 12 November 2024, the Speaker said he received a Motion to remove the Prime Minister under Article 43(2) of the Constitution; signed by one-sixth of the members of Parliament. Parliament will convene within seven days to proceed with deliberations;
- (v) On 7 November 2024, Parliament was convened in accordance with Standing Order 13 (3). Quorum was met as stipulated in Article 21 (4) and Standing Order 50 (1).



However, business has not been transacted due to the passing of a staff member of the Parliament Secretariat on the 6 November 2024. Accordingly, Parliament was adjourned until Tuesday 12 November 2024 and continued its business until Friday 15 November 2024 and Parliament adjourned again to Monday 18 November 2024.

On 18 November 2024, since there was not quorum, the Speaker of Parliament adjourned Parliament until the next day 19th November 2020. A true copy of the minutes of Parliament on 18 November 2024 is marked 'MB5'.

## 2. Sworn statement of Esther Rory, Secretary of the Council of Ministers

16. Esther Rory, the Secretary of the Council of Ministers says that on 18 November 2024, around 11:30am or three to five minutes after 11:30am the Council of Ministers met and decided to advise the President to dissolve Parliament (the Decision). She attached a copy of the decision of the Council of Ministers and marked as "ER1". The decision is as follows:

GOUVERNEMENT DE LA  
RÉPUBLIQUE DE  
VANUATU  
  
LA SECRÉTAIRE- GÉNÉRALE



GOVERNMENT OF THE  
REPUBLIC OF VANUATU  
  
COUNCIL OF MINISTERS

Monday 18th Novembre 2024

*Hon. Charlot Salwai Tabimasmias (MP), Prime Minister of the Republic of Vanuatu  
Government of the Republic of Vanuatu*

*And*

*Hon. Matai SEREMAI AH NAWALU (MP), Deputy Prime Minister & Minister of Foreign  
Affairs, International Cooperation & External Trade (MOFAICET)*

*Hon. Johnny KOANAPO NIES RASOU (MP), Minister of Finance & Economic  
Management (MFEM)*

*Hon. John DAHMASING SALONG (MP), Minister of Climate Change (MOCC)*

*Hon. John SIMIL (MP), Minister of Lands and Natural Resources (MLNR)*

*Hon. Xavier Harry (MP), Minister of Agriculture, Livestock, Forestry, Fisheries &  
Biosecurity (MALFFB)*

*Hon. John SOLOMON NAPUAT (MP), Minister of Internal Affairs (MOIA)*

*Hon. John AMOS (MP), Minister of Justice & Community Services (MJCS)*

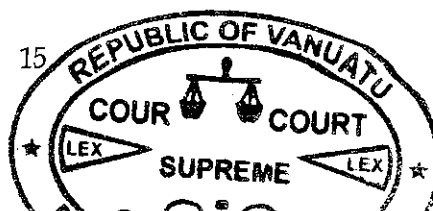
*Hon. Samson SAMSEN (MP), Minister of Trade & Commerce (MTC)*

*Hon. Tomker NETVUNEI (MP), Minister of Youth Development & Sports (MYDS).*

*Government of the Republic of Vanuatu*

*Dear Hon. Prime Minister & Hon. Ministers,*

**COM DECISION No. 339: DISSOLUTION OF PARLIAMENT – CONSTITUTION OF THE  
REPUBLIC OF VANUATU ARTICLE 28 (3).**



**"The President of the Republic of Vanuatu may, on the advice of the Council of Ministers, dissolve Parliament."**

The Council of Ministers (COM- 13th Legislature- 2024) held its No. 026<sup>th</sup> (twenty Sixth) URGENT COM Meeting on Monday 18<sup>th</sup> November 2024.

Here are the decisions made during this meeting:

1. Com **approved and agreed** unanimously that Council of Ministers after taking all necessary consideration to advise his Excellency President of the Republic of Vanuatu to dissolve Parliament. The reasons are as follows:
  - i) COM note that this is the fifth "motion" of "NO Confidence" of this current legislature
  - ii) COM **note** that despite all these efforts through referendum, there are issues that cannot be addressed:
    - Teachers' issues
    - Air Vanuatu issues
    - 2025 Budget
    - Government cannot fully function under such political instability.
  - iii) COM **note** that the People of the Republic of Vanuatu have voted in favour of the Referendum because they want "Political Stability" for their country- therefore COM agrees to give the people opportunity to elect a fresh mandate in line with Referendum's outcomes.

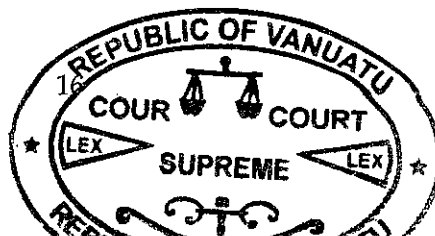
Thankyou

(signature) plus ( Seal) Secretary Com

Esther Rory  
Secretary

CC: Hon. Prime Minister  
Hon. DPM  
All Hon. Ministers  
All DGs  
All 1st PA  
Attorney General  
Chairman of the Public Service Commission  
Acting Director of Finance  
Treasury Unit  
DSPPAC  
PRO"

17. Esther Rory also deposed that on the same date (18 November 2024), the Honourable Prime Minister wrote to the President communicating the Council of Ministers' decision. She also





attached a copy of that letter from the Prime Minister to the President as "ER2". That letter is reproduced below:

*"Republic of Vanuatu*  
-----  
THE PRIME MINISTER



*République de Vanuatu*  
-----  
LE PREMIER MINISTRE

Monday 18<sup>th</sup> Novembre 2024

H.E. Moli Nikenike Vurobaravo Moliunavanua  
President of the Republic  
Office of the President  
PORT-VILA

**SUBJECT: ADVICE OF THE COUNCIL OF MINISTERS TO DISSOLVE PARLIAMENT**

Your Excellency,

*I present my compliments to His Excellency and have the honor to submit the unanimous decision of the Council of Ministers to advise the President of the Republic in accordance with Article 28 (3) of the Constitution to dissolve Parliament.*

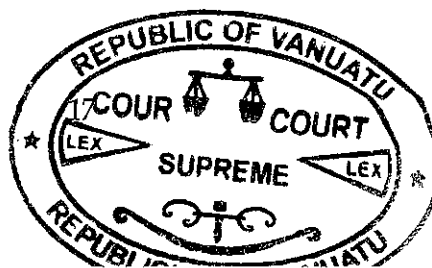
*I avail myself of this opportunity to renew to His Excellency the assurances of my highest consideration.*

*(signature of PM) plus (Seal of Prime Minister)*

**Hon. Charlot Salwai Tabimasmas, MP**  
Prime Minister"

**3. Sworn statement of Joe Natuman Junior, Acting Parliamentary Counsel's Unit, Office of the Attorney General, Port Vila, Vanuatu**

18. Joe Natuman Junior, among other matters, deposed that on 18 November 2024, he attended their office at Parliament compound. On that date of 18 November 2024, Parliament was scheduled to debate Government Bills however Parliament was adjourned due to lack of quorum.
19. On 18 November 2024, the Unit of Parliamentary Counsel received instructions from the Council of Ministers through the Attorney General who attended the Council of Ministers meeting to prepare an instrument of dissolution of Parliament.



20. On 18 November 2024, the Office of Parliamentary Counsel received and gazette the instrument of dissolution dated the same date as "JJN1". The Instrument of dissolution of Parliament is reproduced below:



**"REPUBLIC OF VANUATU  
CONSTITUTION OF THE REPUBLIC OF VANUATU**

***Instrument of Dissolution of Parliament***

*In exercise of the powers conferred on me by sub article 28 (3) of the Constitution of the Republic of Vanuatu, I, His Excellency, MOLI NIKENIKE VUROBARAVU MOLIUNAVANUA, President of the Republic of Vanuatu, on the advice of the Council of Ministers, Dissolve Parliament.*

*This Instrument comes into force on the day on which it is made.*

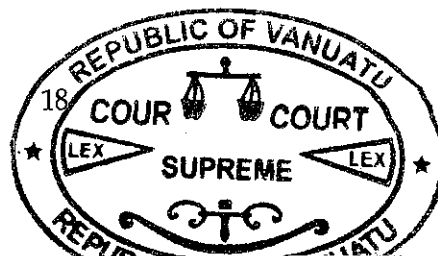
*Made at Port Vila this 18th day of November, 2024.*

*(Signature of President) plus (Seal of President)*

***His Excellency, MOLI NIKENIKE VUROBARAVU MOLIUNAVANUA  
President of the Republic of Vanuatu"***

**VII. Brief Facts**

21. The facts of this case are agreed and not disputed by the parties. They are set out as follow:
- (a) Following summons for Parliament to meet for its 2024 Second Ordinary Session, Parliament was summoned to meet on 7 November 2024;
  - (b) On 7 November 2024, Parliament convened, however it did not transact with its business due to passing away of one of the staff of the Parliament Secretariat, accordingly Parliament was adjourned to 12 November 2024;
  - (c) On 7 November 2024, the Office of the Speaker of Parliament received Motion No. 7 of 2024 – Motion to move the Electoral College to resolve to pass a motion to remove the President of the Republic of Vanuatu;



- (d) On 12 November 2024, the Office of the Speaker of Parliament received Motion No. 8 of 2024 – Motion to move Parliament to resolve to pass a motion of no confidence in the Prime Minister;
- (e) On Tuesday 12 November 2024, Parliament met and continued with its business until Friday 15 November 2024;
- (f) On 18 November 2024, Parliament was scheduled to debate Government Bills, however Parliament was adjourned to 19 November 2024 due to lack of quorum;
- (g) On 18 November 2024 around 11:30am the Council of Ministers (COM) met and resolved to advise the President to dissolve Parliament;
- (h) On the same date 18 November 2024, the Prime Minister wrote to the President communicating the COM's decision;
- (i) Later on 18 November 2024, the President dissolved Parliament and forwarded to the Office of the Attorney General the Instrument of dissolution for gazettal and around 4:30pm the office of the Attorney General published in the Gazette No. 9 of 2024 the instrument of dissolution.

## VIII. Issues

22. There are two (2) issues to be determined by this Court:
- (a) Was the Motion No. 7 of 2024 to impeach the President of the Republic invalid?
  - (b) Was the dissolution of Parliament by the President of the Republic on 18 November 2024 unconstitutional as irrational and/or unsustainable?

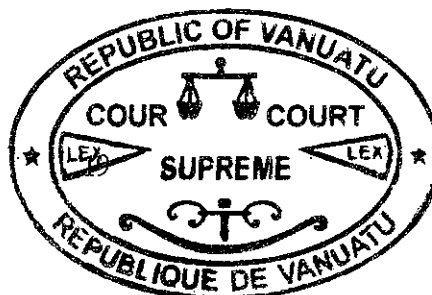
## IX. Law

23. Below are the relevant Constitutional Provisions:

- Article 4(1) and (2) says:

***“National sovereignty, the electoral franchise and political parties***

*(1) National sovereignty belongs to the people of Vanuatu which they exercise through their elected representatives.*



- (2) *The franchise is universal, equal and secret. Subject to such conditions or restrictions as may be prescribed by Parliament, every citizen of Vanuatu who is at least 18 years of age shall be entitled to vote.*"

- Article 5 says:

**"Fundamental rights and freedoms of the individual**

- (1) *The Republic of Vanuatu recognises, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health –*

...

- (d) *Protection of the law;"*

- Article 6 states:

**6. Enforcement of fundamental rights**

- (1) *Anyone who considers that any of the rights guaranteed to him by the Constitution has been, is being or is likely to be infringed may, independently of any other possible legal remedy, apply to the Supreme Court to enforce that right;*
- (2) *The Supreme Court may make such orders, issue such writs and give such directions, including the payment of compensation, as it considers appropriate to enforce the right."*

- Article 53 states:

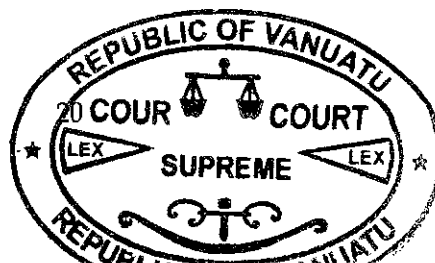
**53. Application to Supreme Court regarding infringements of Constitution**

- (1) *Anyone who considers that a provision of the Constitution has been infringed in relation to him may, without prejudice to any other legal remedy available to him, apply to the Supreme Court for redress;*
- (2) *The Supreme Court has jurisdiction to determine the matter and to make such order as it considers appropriate to enforce the provisions of the Constitution."*

- Article 28 says:

**Life of Parliament**

- (1) *Parliament, unless sooner dissolved under paragraph (2) or (3), shall continue for 4 years from the date of its election.*
- (2) *Parliament may at any time decide, by resolution supported by the votes of an absolute majority of the members at a special sitting when at least three-fourths of the members are present, to dissolve Parliament. At least 1 week's notice of such a motion shall be given to the Speaker before the debate and the vote on it.*
- (3) *The President of the Republic may, on the advice of the Council of Ministers, dissolve Parliament.*



(4) *General elections shall be held not earlier than 30 days and not later than 60 days after any dissolution.*

(5) *There shall be no dissolution of Parliament within 12 months of the general elections following a dissolution under sub article (2) or (3).*

- Article 36 states:

**36. Term of office and removal of President**

(1) *The term of office of the President of the Republic shall be 5 years.*

(2) *The President of the Republic may be removed from office, only for gross misconduct or incapacity, by the electoral college provided for in Article 34 on a motion introduced by at least one-third of the members of the college and passed by at least two-thirds of its members, when at least three-fourths of its members, including at least three-fourths of the chairmen of the Local Government Councils, are present.*

(3) *At least 2 weeks' notice of the motion provided for in sub article (2) shall be given to the Speaker.*

(4) *If there is no quorum at the first sitting as provided in sub article (2), the electoral college may meet and vote on the motion provided for in sub article (2) a week later even if there is only a quorum of two-thirds of the members of the college.*

- Article 39 states:

**9. Executive power**

(1) *The executive power of the people of the Republic of Vanuatu is vested in the Prime Minister and Council of Ministers and shall be exercised as provided by the Constitution or a law.*

(2) *The Prime Minister shall keep the President of the Republic fully informed concerning the general conduct of the government of the Republic.*

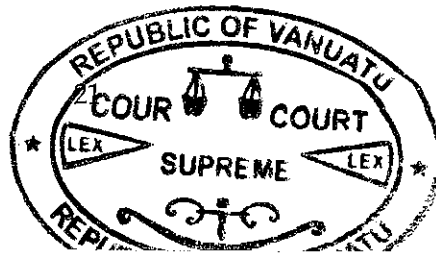
- Article 40 states:

(1) *There shall be a Council of Ministers which shall consist of the Prime Minister and other Ministers.*

- Article 43 states:

(1) *The Council of Ministers shall be collectively responsible to Parliament.*

(2) *Parliament may pass a motion of no confidence in the Prime Minister. At least 1 week's notice of such a motion shall be given to the Speaker and the motion must be signed by one-sixth of the members of Parliament. If it is supported by an absolute majority of the members of Parliament, the Prime Minister and other Ministers shall cease to hold office forthwith but shall continue to exercise their functions until a new Prime Minister is elected.*



- Article 66 provides for conduct of leaders as follows:

- (1) Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to –
  - (a) place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
  - (b) demean his office or position;
  - (c) allow his integrity to be called into question; or
  - (d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.
- (2) In particular, a leader shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by sub article (1).

- Article 67 states:-

*For the purposes of this Chapter, a leader means the President of the Republic, the Prime Minister and other Ministers, Members of Parliament, and such public servants, officers of Government agencies and other officers as may be prescribed by law.*

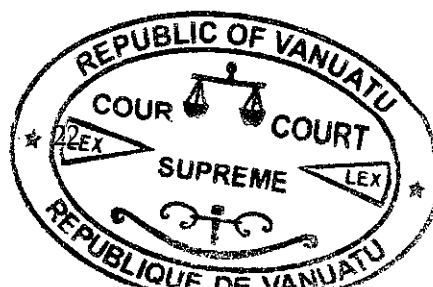
## X. Submissions and Discussions

24. Before I proceed further, I must remind myself of the statements made by the Courts in these type of cases since 1996: -

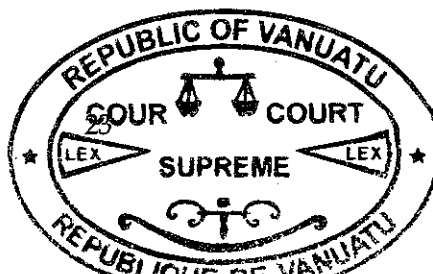
*"... the court is not concerned with the political views or policies of any person or party. The Courts are not concerned with the desirability or undesirability of any particular course of action. The court considers only whether the rights and responsibilities which are enshrined in the Constitution have been lawfully and properly exercised and whether the law as created by parliament has been given effect."*

25. The Court shall first deal with the issue of the validity of the Motion No. 7 of 2024 – to impeach the President of the Republic of Vanuatu.

1. Was the Motion No. 7 of 2024 – to impeach the President of the Republic – Invalid?



26. At the hearing of this case, during the discussions between the Court and counsel for the Applicants and the First, Second, Third and Fourth Respondents that the following course of event are agreed and accepted:
- (i) That on 7 November 2024, a Motion No. 7 of 2024 – to impeach the President of the Republic was lodged before the Speaker of Parliament;
  - (ii) That the Motion had the signatures of 19 Members of Parliament who said they are also members of the Electoral College in support;
  - (iii) That the 19 Members of Parliament who signed the Motion did not introduced the Motion as the Electoral College is yet to be summoned, and once the Electoral College is convened, the Motion can then be introduced by at least one-third of the members of the College;
  - (iv) That at least 2 weeks' notice of the Motion was given to the Speaker;
  - (v) That on 12 November 2024, the Speaker, in a press release, confirmed, among other matters, that he had received the Motion to impeach the President of the Republic; and the Speaker stated that steps had been taken to summon the 58 members of the Electoral College to deliberate on the Motion to impeach the President "*within the two weeks*" timeframe ie, by Friday 22 November 2024;
  - (vi) That the steps described by the Speaker have yet to be executed;
  - (vii) That there was no summons yet issued to the members of the Electoral College about the Motion No. 7 of 2024 to impeach the President of the Republic, the date, the time and venue of the deliberations of the Electoral College;
  - (viii) That the Motion No. 7 of 2024 – to impeach the President of the Republic is now in the office of the Speaker of Parliament but not before the Parliament;
  - (ix) That the dissolution of Parliament on 18 November 2024 by the President did not stop the processes and steps of the Motion to impeach the President of the Republic but these processes and steps are only halted, delayed or postponed by the dissolution of Parliament;
27. On the basis of the above agreed and accepted facts, and as a consequence of these facts, the Motion No. 7 of 2024 to impeach the President of the Republic is not invalid; it is still alive and it is now in the office of the Speaker of Parliament while Parliament was dissolved on 18 November 2024.



28. There is no need for the Court to answer to any other legal arguments on the validity or not of that Motion No. 7 of 2024 unless it is necessary to do so.

29. The Court shall now deal with the Motion No. 8 of 2024 – Motion of no confidence in the Prime Minister.

**2. What was the fate of the Motion No. 8 of 2024 – Motion of no confidence in the Prime Minister**

30. This Motion No. 8 of 2024 – Motion of no confidence in the Prime Minister was lodged and received by the Speaker of Parliament on 12 November 2024. It was signed by one-sixth of the members of Parliament. The Speaker was satisfied that the constitutional requirements were met. It was listed for debate and vote on 19 November 2024 by Parliament.

31. Parliament was dissolved by the President of the Republic on 18 November 2024.

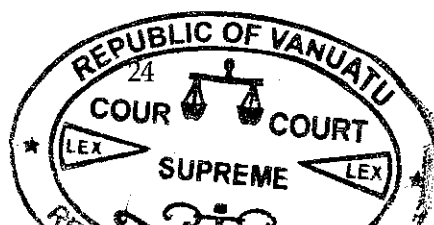
32. In such circumstances, the Motion No. 8 of 2024 – Motion of no confidence in the Prime Minister will be determined on the basis of the case authorities of the President of the Republic of Vanuatu v Korman [1998] VUCA 3; Civil Appeal Case 08 of 1997 (9 January 1998); Vohor v Abiut [2004] VUCA 1; Civil Appeal Case 05 of 2004 (28 May 2004); Vanuarorua v The President of the Republic of Vanuatu [2015] VUSC 175; Constitutional Case 822 of 2015 (16 December 2015); Barthelemy v President of the Republic of Vanuatu [2022] VUSC 158; Constitutional Case 2240 of 2022 (9 September 2022).

33. The Applicants made no specific submissions in respect to that Motion No. 8 of 2024 – Motion of no confidence in the Prime Minister; and as I sense it, the fate of that Motion will depend on the success of the Applicants' case that the decision of the President of the Republic to dissolve Parliament on 18 November 2024 was unconstitutional as irrational and unsustainable. This brings me to the main issue in this case.

**3. Was the dissolution of Parliament on 18 November 2024 by the President of the Republic, unconstitutional as irrational and/or unsustainable?**

34. The Applicants contend that on 18 November 2024, the First Respondent (President of the Republic) in dissolving Parliament had placed himself in a position where he was in a conflict-of-interest situation.

35. It is to be noted that the Court of Appeal has considered the factual scenario of the then Speaker/Acting President exercising his power under Article 28(3) notwithstanding that there was a motion of no confidence pending against the then Prime Minister in Vohor v Abiut [2004] VUCA 1. In that case, at first instance before the Supreme Court and the Court of Appeal, the court gave priority to the Acting President's exercise of his power under Article

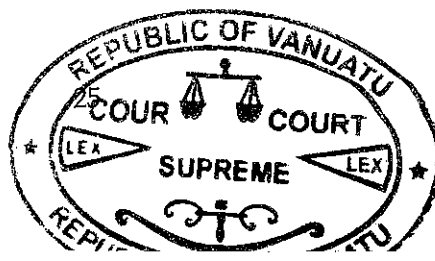




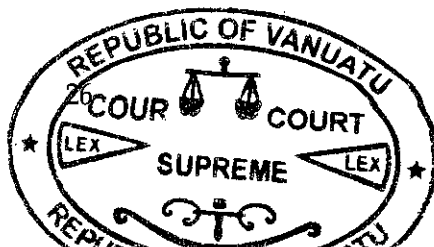
28(3) to dissolve Parliament following the advice that he had received from the Council of Ministers. Both at first instance and the Court of Appeal relied on the following passage of the Court of Appeal's judgment in *President of the Republic of Vanuatu v Korman* [1998] VUCA 3:

*"In our judgment a course of action which had the effect of denying Members of Parliament their right to express an unfavourable opinion in the Government leadership cannot be elevated to a priority over the right of the Council of Ministers to advise the President that Parliament should be dissolved and the constitutional right of a President (having received such advice) to exercise the responsibility vested in him under the Constitution. We are of the view that the right of the people of Vanuatu to democratically express their view in the election of a new Parliament must be accorded the priority. Article 43 is not one of those Articles which is specifically covered by Article 5. The right which Members of Parliament have under Article 43, is a right which exists only if Parliament exists. It is to allow the tail to wag the dog to suggest that the rights of the Members of Parliament ought to be accorded priority over the rights of the people to elect a new Government when the President, having exercised the provisions of the Constitution, has determined that Parliament should be dissolved."*

36. The above passage is relevant or appropriate in the present case in respect to both Motion No. 7 of 2024 and Motion No. 8 of 2024 (Motion of no confidence in the Prime Minister).
37. The Applicants asserted in their submissions (para 19 to 26) that based on the following circumstances, the President failed to discharge the duties described in Article 66 of the Constitution when it dissolved Parliament:
- (i) The President had fore knowledge of the Motion to remove the President and he did nothing to challenge the validity of the Motion;
  - (ii) The President had knowledge of the Motion of no Confidence and the consequences to COM and the Prime Minister if the Motion of No Confidence succeeded;
  - (iii) That the President is a leader within the meaning of Article 67;
  - (iv) By dissolving Parliament, the President was in a position of conflict of interest given that by doing so would directly affect or handicap the Motion for his removal;
  - (v) The President should have regard to the said conflict of interest and the consequences of acting in a position of conflict and to decline to dissolve Parliament upon receiving COM's advice;
  - (vi) The President failed to consult with the Speaker or Leader of the Opposition as to the COM's advice.



38. The First Respondent (President) opposes the Applicants' submissions that he contravened Article 66(1) and (2) as pleaded at paragraph 17 of the Application or at all.
39. It is said on behalf of the First Respondent (President) that assistance as to the proper interpretation of a breach of Article 66 can be gained from the case of *Nari v Republic of Vanuatu* [2015] VUSC 132 where Fatiaki J. stated at [8]:
- "If I may say so such a loan would appear "ex facie" to be unobjectionable and outside the ambit of Article 66(1) of the Constitution which specifically targets the conduct or behavior of a leader that has an enumerated consequence, such as, give rise to a "conflict of interest" or which compromises a fair exercise of his public or official duties or demeans his office or position or allows his integrity to be questioned or which endangers or diminishes respect for or confidence in the integrity of the Government. More generally, Article 66(2) prohibits a leader from using his office for personal gain or from entering into any transaction or engaging in any enterprise or activity that would give rise to doubt in the public mind as to the propriety of his conduct."*
40. It is to be noted that the conduct or behaviour of the President in the present case was the Decision.
41. The Applicants submit that the First Respondent (President) should not have made the Decision because he should have allowed the potential for a motion to be introduced against him under Article 36(2). In essence, the Applicants' submissions are tantamount to saying that their right to introduce a motion against the First Respondent (President) under Article 36(2) should take priority over the President's power under Article 28(3). The Applicants' submissions on that point cannot succeed and they are rejected for the same reasons that the Court of Appeal decided in *Korman's case* and *Vohor v Abiut* that priority is to be given to the exercise of the President's power under Article 28(3) over the right of Members of Parliament under Article 43(2) to pass a motion of no confidence in the Prime Minister, and that, in the present case, by parity of reasoning the President's power under Article 28(3) must be given priority over the right to impeach the President under Article 36(2).
42. The Applicants rely on the case of *Vohor v President of the Republic of Vanuatu* [2015] VUCA 40. But, the facts of the present case, are a far cry from those in *Vohor v President of the Republic of Vanuatu* [2015] VUCA 40 where the Acting President purported to exercise the power under Article 38 to pardon himself and 13 Members of Parliament who had been convicted of bribery. The *Vohor* case was a clear example of the Acting President using his office for personal gain. In that case, the Supreme Court and Court of Appeal held that the Acting President's purported exercise of power under Article 38 was in breach of Article 66 and was so unreasonable that no reasonable person exercising the power could have come to it, applying the well-known principle encapsulated in *Associated Provincial Picture Houses v Wednesbury Corp.* [1948] 1 KB 223.



43. As the Court of Appeal said in *Vohor v President of the Republic of Vanuatu* [2015] VUCA 40 at [23]:

*"It is difficult to imagine a more serious and obvious conflict of interest, and a more palpable failure of a leader to recognize his responsibilities to Parliament and his nation, than for a leader to pardon himself and others in the same position."*

44. In this present case, there is no evidence that the President did not recognize his responsibilities to Parliament and the nation by the Decision following his receipt of advice from the Council of Ministers.

45. The Court rejects the Applicants' contention that the Decision was made in breach of Article 66 of the Constitution.

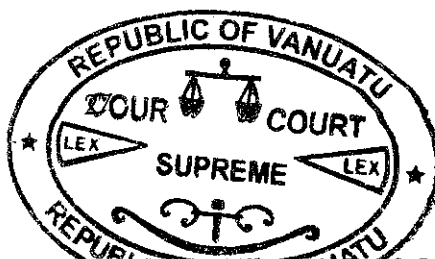
46. In addition to the Applicants' arguments under Article 66, the Applicants submit that the Decision to dissolve Parliament on 18 November 2024 is so irrational and unsustainable that it cannot stand.

47. This is a heavy burden for the Applicants to discharge. As the Court of Appeal stated in *Korman's case*:

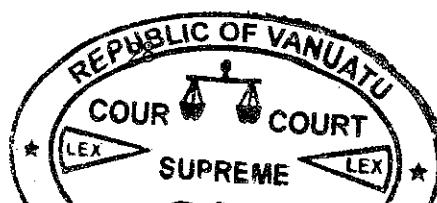
*"Article 28(3) vests a wide and extensive discretion in the President. There is a heavy burden on anyone who asserts that there has been an improper exercise of that discretion. We are not satisfied that the Petitioners have discharged that burden in the Supreme Court. Where the Constitution provides such a wide and unfettered discretion it is necessary to show that in legal terms the decision taken by the President was irrational and unsustainable. That has not been established on the evidence presented".*

48. It must be noted that, in the present case, most of the evidence presented by the Applicants were in relation to:

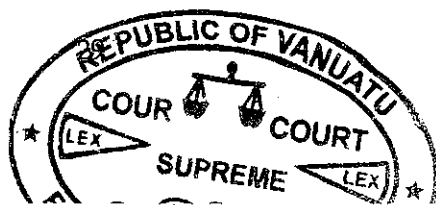
- The President having knowledge of the Motion to remove the President and the Motion of no Confidence in the Prime Minister;
- The political groupings supporting the Motion to remove the President;
- Service of the Motion to remove the President and the Motion of no Confidence in the Prime Minister to the Parliament's secretariat;
- The President departed from past practice, where he consulted political parties, church leaders, and civil society and he took a week before he dissolved Parliament;



- President sought legal advice from senior private lawyers in relation to the Motion against the President;
  - The President acted immediately and dissolved Parliament once he received advice from the Council of Ministers compared to in the past when he took week;
  - The effect of dissolution breached the Applicants' rights under Article 36(2) to debate the Motion against the President.
49. The evidence of the Applicants failed heavily to prove that the exercise of the President's discretion under Article 28(3) was wrong in law and unconstitutional. The evidence of the Applicants as outlined above, do not in any way prove any act of the President in dissolving Parliament on 18 November 2024 was of a conflict of interest under Article 66.
50. There were assertions that one Mr. Wilson Thomas lauma, Assistant Secretary to the President, enquired with one of the Applicants (Mr. Gracia Shradrack) about the Motion to remove the President on 8 November 2024 and that thereafter Mr. lauma requested Mr. Shadrack and the Applicants to abandon the Motion to remove the President. I need to say here that the conduct of Mr. Wilson Thomas lauma was grossly inappropriate in the circumstances, such conduct may damage the Office of the President in the future if it is not stopped. Here, in this case, such a conduct cannot affect the exercise of the discretion by the President under Article 28(3) of the Constitution to dissolve Parliament on 18 November 2024 as he did.
51. The Applicants submit (at paragraph 95 of their submissions) that the Decision of the President to dissolve Parliament on 18 November 2024 was irrational because it was rushed because it stood in contrast to the President's decisions in 2022 and 2023.
52. Judicial notice can be taken of the fact that since the First Respondent (President) took office in July 2022, he has been called on to exercise his power under Article 28(3) in 2022, 2023 and 2024:
- a) In 2022 the President decided to dissolve Parliament acting on the advice of the Council of Ministers. The decision of the President was challenged but the challenge was unsuccessful in *Barthelemy v President of the Republic of Vanuatu* [2022] VUSC 158;
  - b) In 2023 notwithstanding the advice of the Council of Ministers, the President decided not to dissolve Parliament; that decision was not challenged by a constitutional application nor by judicial review;
  - c) In 2024 acting on the advice of the Council of Ministers, the President made the Decision which is now challenged presently before this Court.



53. The First and Second Applicants allege that the President is guilty of gross misconduct because he decided not to dissolve Parliament on the Council of Ministers' advice in November 2023. But again, that decision was never challenged before the Court. It is difficult to see how when the President exercised his discretion not to dissolve Parliament under Article 28(3), he was criticized of committing gross misconduct.
54. The background referred to above reflects the history of the President exercising his discretion under Article 28(3) of the Constitution since he took office in July 2022 but not as portrayed by the Applicants.
55. It is further of note that it is not prescribed in Article 28(3) (or elsewhere) as to the amount of time the President is required to take before he makes the decision to dissolve Parliament acting on the advice of the Council of Ministers. There is also no obligation for the President to consult with other parties, such as the Applicants, before making the Decision. The discretion under Article 28(3) as to when the President makes such decision is vested solely in the President.
56. It is pointed out that in *Vohor v Abiut* [2004] VUCA 1, the Acting President made the decision to dissolve Parliament on 10 May 2004 being the same day that he received advice from the Council of Ministers and that decision withstood constitutional challenge. In the circumstances of this case, given everything that occurred since 2022, I agree with the argument that it cannot be said that the President acted irrationally by making the Decision on 18 November 2024, being the same day that he received the Council of Ministers' advice, nor that it was unsustainable. I accept the submission of the Respondents that it is a more supposition on the Applicants' part to submit otherwise.
57. There is no factual singularity of this case in comparison with the previous cases decided by the Court of Appeal in *Korman's case* and *Vohor v Abiut* that would dictate that the result should be any different from the unsuccessful constitutional challenges in those cases.
58. Like those decisions concerning Article 43(2), Article 36(2) is not one of those Articles specifically covered by Article 5 of the Constitution. Once it is accepted that the Decision was a valid exercise of the President's constitutional right, the Application must be dismissed because Parliament has been dissolved and the Applicants' rights under Articles 43(2) and 36(2) cannot take priority over the rights of the people to elect a new Government.
59. The Applicants have not discharged the heavy burden on them to provide evidence that the wide and unfettered discretion of the President under Article 28(3) in making the Decision was irrational or unsustainable and nor that their constitutional rights have been infringed.
60. The Urgent Constitutional Application of the Applicants must be dismissed with costs.



61. My answer to the two issues is as follows: -

- **Issue 1:** The Motion to impeach the President of the Republic is not invalid. It is deposited before the Speaker of Parliament and it is in the Office of the Speaker of Parliament.
- **Issue 2:** The dissolution of Parliament by the President of the Republic on 18 November 2024 is not unconstitutional and it is not irrational and/ or unsustainable.

62. The Court, therefore, makes the Orders below.

## XI. ORDERS

1. The Urgent Constitutional Application of the Applicants filed on 21 November 2024 is, hereby, dismissed;
2. The First, Second, Third and Fourth Respondents are entitled to costs assessed in VT 250,000 against the Applicants;
3. Such amount of costs of VT250,000 shall be paid by the Applicants to the Respondents within 28 days.

**DATED at Port Vila, this 13<sup>th</sup> day of December, 2024.**

**BY THE COURT**

Hon. Chief Justice Vincent LUNABEK

