

BETWEEN: DONALD RESTUETUNE
Appellant

AND ELECTORAL COMMISSION
Respondent

Coram: *Hon. Chief Justice Vincent Lunabek
Hon. Justice John von Doussa
Hon. Justice Ronald Young
Hon. Justice Daniel Fatiaki
Hon. Justice Dudley Aru
Hon. Justice Mary Sey
Hon. Justice Stephen Harrop*

Counsel: *Mr. Justin Ngwele for Appellant
Mr. Frederick Gilu for Respondent*

Date of hearing: 24th March 2014

Date of judgment: 4th April 2014

JUDGMENT

1. This is an appeal against the quantum of an award of costs made after the appellant discontinued his election petition challenging the results of the Luganville Constituency he had contested in the 2012 General Elections.
2. The election petition was filed in the Supreme Court, Luganville and named George Wells and the Electoral Commission as respondents. It was managed over 3 conferences conducted in February, March and April 2013 and was attended by counsel representing the Electoral Commission in Santo.
3. By notice dated 17 July 2013 new dates were assigned for the week of 12 August to 16 August 2013 before the Supreme Court in Santo.
4. On 5 August 2013 the Petitioner's counsel advised the Court of his intention to discontinue the petition, and on 8 August 2013 did so.
5. The effect of filing the notice of discontinuance was to end the proceedings save for costs. On 12 August 2013 in the absence of the petitioner, the trial judge entertained an oral application for costs from counsel representing the Electoral Commission who submitted a handwritten summary of what was claimed to be the

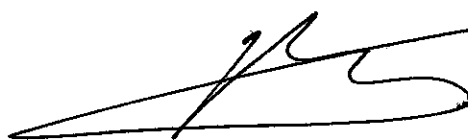


costs incurred by the Electoral Commission. The total amount claimed was VT957,500, although counsel for the Commission suggested an award of VT650,000 would be appropriate.

6. The trial judge granted the application and awarded the Electoral Commission costs of VT650,000.
7. The petitioner on becoming aware of the costs order made against him, immediately filed an application to set it aside on the basis that the order was made in his absence and was "*not substantiated*". The application was later heard and dismissed as the Court considered itself *functus officio* in the matter.
8. On 5 November 2013, the petitioner filed the appeal, challenging the costs order on three main grounds, first, that the amount awarded was "*massively over exaggerated and does not reflect the work done by the Electoral Commission*"; secondly, the trial judge erred in ordering costs as the election petition was discontinued prior to any hearing taking place; and finally, the trial judge failed to consider the several factors enumerated in Rule 15.8 of the Civil Procedure Rules.
9. In written submissions filed in the appeal, appellant's counsel conceded that some costs are properly due to the Electoral Commission for its attendances before the Supreme Court in Luganville, Santo and that "*a reasonable amount of costs would be VT305,900*".
10. After some discussion before this Court the Electoral Commission agreed to accept the offer of VT305,900.
11. The parties also agreed that each party should bear their own costs of the appeal.
12. The appeal is accordingly disposed of on the basis agreed between the parties.

DATED at Port-Vila this 4th day of April 2014

BY THE COURT



**Vincent LUNABEK
Chief Justice**

