IN THE COURT OF APPEAL OF THE REPUBLIC OF VANUATU
(Civil Appellate Jurisdiction)

CIVIL APPEAL CASE No.33 OF 2014

BETWEEN:

HON. MOANA KALOSIL CARCASSES
First Appellant

HON. RIALUTH SERGE VOHOR
Second Appellant

HON. MARCELLINO PIPITE
Third Appellant

HON. TONY NARI
Fourth Appellant

HON. TOARA DANIEL
Fifth Appellant

HON. JEAN YVES CHABOD
Sixth Appellant

HON. ARNOLD PRASAD
Seventh Appellant

HON. SILAS YATAN ROUARD
Eighth Appellant

HON. HOSEA NEVU
Ninth Appellant

HON. PASCAL IAUKO IARIS
Tenth Appellant

HON. JOHN AMOS VACHER
Eleventh Appellant

HON. TONY WRIGHT
Twelfth Appellant

HON. JEROME LUDVAUNE
Thirteenth Appellant

HON. PAUL TELUKLUK
Fourteenth Appellant

HON. STEVEN KALSAKAU
Fifteenth Appellant

HON. WILLIE JIMMY TAPANGARARUA
Sixteenth Appellant

HON. JONAS JAMES
Seventeenth Appellant

HON. ROBERT SIKOL BOHN
Eighteenth Appellant

HON. CHRISTOPHER EMELEE
Nineteenth Appellant

HON. SAMSON SAMSEN
Twentieth Appellant

HON. THOMAS LAKEN
Twenty First Appellant

HON. KALFAU MOLI
Twenty Second Appellant

AND **PHILIP BOEDORO**
SPEAKER OF PARLIAMENT
First Respondent

AND **REPUBLIC OF VANUATU**
Second Respondent

AND **HON. SIMEON KALTALIU**
First Interested Party

AND **HON. JOHN TESEI**
Second Interested Party

AND **HON. RICHARD NAMEL**
Third Interested Party

AND **HON. RICHARD MERA**
Fourth Interested Party

AND **HON. MORKING STEVENS IETIKA**
Fifth Interested Party

Coram: *Hon. Chief Justice Vincent Lunabek*
Hon. Justice Bruce Robertson
Hon. Justice Daniel Fatiaki
Hon. Justice Oliver Saksak
Hon. Justice John Mansfield

Counsel: *Mr Godden Avock for Appellants*
Mr Kiel Loughman for First Respondent Speaker
Mr Kent Tari for the Second Respondent Republic of Vanuatu
No appearance for the Interested Parties

Date of Hearing: *4 November 2014*

Date of Judgment: *14 November 2014*

JUDGMENT

1. This is an appeal from a judgment of 8 September 2014 delivered by Justice Harrop in which he refused the relief sought and dismissed the Applicants' Application filed pursuant to Article 53(1) (2) of the Constitution.

2. The Speaker of Parliament refused to summon Parliament in an extraordinary session because the request which was purported to be signed by a majority of Members of Parliament pursuant to Article 21(2) of the Constitution, contained signatures of three (3) Members of Parliament who informed the Speaker that they had actually never seen the request for the Speaker to convene Parliament in an extraordinary session and also that they had never signed such a request and that their signatures were used without their consent.

3. This case concerns the powers of the Speaker of Parliament to be satisfied that a majority of Members of Parliament have requested an extraordinary session.

4. The back ground and respective contentions at first instance and the course of rehearing and detailed facts as found by the primary judge are comprehensively dealt with and recorded in the judgment below. It is not necessary to repeat them.

5. Suffice it to state briefly the following:

   (I) The appellants deposited with the Speaker on 29 August 2014 a notice apparently signed by a majority of MPs (27) requesting Parliament to convene for an extraordinary session, with a motion of no confidence in the Prime Minister signed by 9 of the appellants and the reasons for that motion.

(ii) The Speaker had reason to doubt that the signatures of some of the MPs were included on the request with their consent. On 1 September 2014 the Speaker declared that the notice was not in order because 5 of the MPs "have withdrawn their signatures prior to and after the deposition of that motion".

6. Harrop J found that the Speaker, when he made his decision on 1 September 2014, had reason to believe that 3 of the MPs had not signed any motion of no confidence nor any document in support of it. He also found that that belief was entirely justified. They said they had never seen the request for an extraordinary session, so their signatures did not amount to a knowing and intentional support of it. They had explained to the Speaker how their signatures had been obtained for a different reason.

7. The primary judge concluded:

> *"In my view the Speaker was therefore entirely, justified in reaching the conclusion that although the request for an extraordinary session before him purported to be made by 27 MPs, he could only be satisfied of the validity of the requests in respect of 24 (or perhaps on 22) which in either case was well short of a majority".*

8. In reaching that view, the primary judge applied what was said by the Chief Justice in *Vanuaroroa v. Republic of Vanuatu [2013] VUSC 102*, also a case where the Speaker had refused to summon Parliament in an extraordinary session because the request contained 4 signatures which he considered had been forged. He specifically referred to two passages in the judgment of the Chief Justice in that case. It is helpful to set them out again.

> *"At page 31 of his judgment the Chief Justice said: In the present case, after a Request was lodged to the Speaker, Four (4) Members of Parliament went to see the Speaker and informed the Speaker that they did not sign the Request dated 10 July 2013 which was lodged to his office calling for an extraordinary session. They informed the Speaker that their names and signatures were used on documents for different purposes and at different times. They did not sign the request of 10 July*

*2013. **The speaker has to take the complaints of these Members of Parliament into consideration as he did in this case as part of his constitutional duty**" (emphasis added)*

The Chief Justice went on:

"The ratio decidendi of the case of AG –v- Willy Jimmy which was applied in Lini –v- Speaker in 2004, are relevant only against the actions or behaviours or attitudes of a Speaker of Parliament after a request has been lodged and there were no complaints from Members of Parliament about the use of their signatures or their consent not being sought or authorized to show their intention or support for the request or calling of Parliament in an extraordinary session.

***The Speaker is entitled to consider the complaints of any Member of Parliament that he/she does not sign a Request pursuant to Article 21(2) of the Constitution**. Such a case must also be considered on its own facts and circumstances as the case of Korman –v- Republic of Vanuatu [2010] VUSC 215; Constitutional case No. 02 of 2010 [20 Nov. 2010]" (again, emphasis added)*

9. It was not argued on this appeal that the decision in <u>*Vanuaroroa*</u> is wrong. Harrop J. was correct in deciding to follow the decision in Vanuaroroa and apply it in the present case. We also endorse and confirm its approach and those observations of the Chief Justice.

10. There is no error shown in the findings of fact and the conclusion reached by Harrop J, or in the application of the law to the facts.

11. Before we leave this judgment we cannot ignore the terms and conditions of the so-called loan agreements signed by the members of Parliament that purports to bind their loyalties and constrain their freedom to vote. We firmly condemn such agreements and would have no hesitation in declaring such agreements by (whatever name) as illegal, void, and wholly unenforceable as being contrary to public policy.

12. This point was made clearly over a century ago in *Amalgamated Society of Railway Servants v. Osborne* *[1910] AC 87 where Lord Shaw of Dunfermline said:*

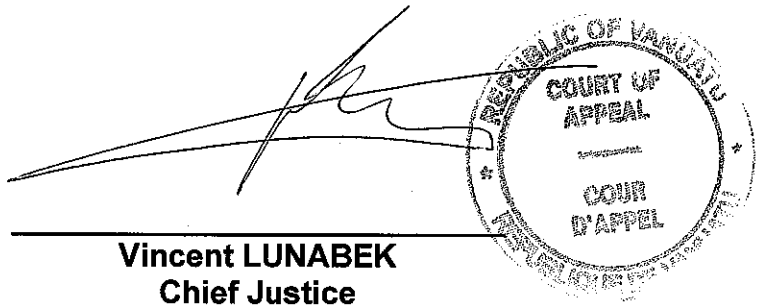
" ... in regard to the member of Parliament himself, he too is to be free, he is not to be the paid mandatory of any man, or organisation of men, nor is he entitled to bind himself to subordinate his opinions on public questions to others, for wages or at the peril of pecuniary loss, and any contract of this character would not be recognised by a Court of law, either for its enforcement or in respect of its breach"

The principle is unchanged and requires to be maintained at all times.

13. Accordingly, the appeal is dismissed. The appellants must pay the first and second respondents costs of the appeal.

DATED at Port-Vila this 14th day of November 2014

BY THE COURT



Vincent LUNABEK
Chief Justice