

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

CIVIL APPEAL CASE No.21 OF 2015

BETWEEN: SPEAKER OF PARLIAMENT
THE HONORABLE MARCELLINO PIPITE (MP)
Appellant

AND: HONORABLE EDWARD NIPAKE NATAPEI (MP)
AND OTHERS
First Respondents

AND: THE REPUBLIC OF VANUATU
Second Respondent

Coram: *Hon. Chief Justice Vincent Lunabek*
Hon. Justice Bruce Robertson
Hon. Justice Oliver Saksak
Hon. Justice Daniel Fatiaki
Hon. Justice John Mansfield
Hon. Justice Mary Sey
Hon. Justice Stephen Harrop
Hon. Justice David Chetwynd

Counsel: *Mr Robin Tom Kapapa and Mr Avock Godden for the Appellant*
Mr Ronald Warsal for the First Respondents
Mr Kent Tari (SLO) for the Second Respondent

Date of Hearing: 15 and 21 July 2015

Date of Judgment: 23 July 2015

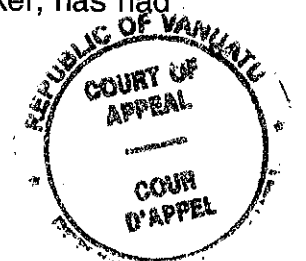
J U D G M E N T

1. This is an appeal from a decision of the Supreme Court ruling on whether the Speaker of the Parliament failed to comply with Article 43 (2) of the Constitution by receiving a motion of no confidence in the Prime Minister on 12 June 2015 and by listing the motion for debate on 18 June 2015, less than a week after he received it.



2. On 24 June 2015 Justice Aru decided that the Speaker's conduct was not in accordance with Article 43 (2) and made consequential orders. Following those orders, the motion of no confidence was withdrawn by those presenting it. There is therefore no current and "live" issue between the parties arising out of the giving of the motion to the Speaker on 12 June 2015. Parliament independently has dealt with the matter.
3. Consequently, the appeal should be dismissed. There is to be an order as to costs in favour of the First Respondents against the Appellant.
4. In the light of the importance of certain matters argued before the primary Judge, and because the parties sought to argue other matters despite the real issues no longer being "live", it is desirable to make two points to ensure they are clear. In respect of the other matters that were the subject of detailed submissions, it is not appropriate for the Court of Appeal to give an advisory opinion on such matters. It is the role of the Courts to decide actual legal and factual disputes between the parties.
5. The two points which we reinforce are:
 - (1) Under Article 43 (2) of the Constitution, the Speaker has no lawful power to list a 'no confidence' motion with less than a week's notice to the Parliament, as the primary Judge correctly decided. That means that the no confidence motion which the Speaker received on 12 June 2015 and accepted as a valid motion, could not be listed for consideration by Parliament on 18 June 2015. Although, the holder of the office of Speaker changed, the constitutional responsibility of the Speaker to list the motion in a timely way still remained. It is for Parliament to pass the motion of no confidence in the Prime Minister. The Speaker could not "rule off" the motion because of a miscalculation by his office as to date.
 - (2) Article 43 (2) of the Constitution requires that the no confidence motion presented to the Speaker, once the Speaker accepts that it is valid, must be notified to the Members of Parliament and that at least one week must elapse after that notification before the motion is passed by Parliament.

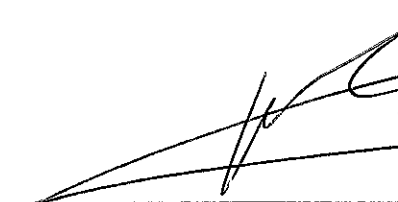
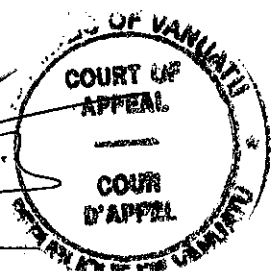
Article 43 (2) of the Constitution is commonly, and correctly, referred to as ensuring that Members of Parliament who wish to present a 'no confidence' motion in the Prime Minister cannot ambush the Prime Minister or those who support the Prime Minister. Therefore, a proposed motion cannot be passed by Parliament except after Parliament as a whole, through the actions of the Speaker, has had not less than a week's notice of the motion.



6. Subject to those two observations, as noted, the appeal is dismissed. Although, there is no ongoing dispute about the matters considered by the primary Judge, we consider that the First Respondents having succeeded in the Supreme Court and on appeal, are entitled to their costs against the Appellant on a standard basis. There is no order as to costs in favour of the Second Respondent, the Republic of Vanuatu.

DATED at Port-Vila this 23rd day of July, 2015

BY THE COURT

Vincent LUNABEK
Chief Justice