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

CIVIL APPEAL CASE No. 1906 OF 2016

BETWEEN: **SPEAKER OF PARLIAMENT**
First Appellant

AND: **REPUBLIC OF VANUATU**
Second Appellant

AND: **ALATOI ISHMAEL KALSAKAU, SATO KILMAN, CHRISTOPHER CLAUDE EMELEE, JACK WONA, SAMSON SAMSEN, KALO PAKOASONGI LAWO, TOM NOAM, JAY NGWELE, HOSEA NEVU, MARC ATI, ISAAC TONGOALILIU, DON KEN, EPHRAIM KALSAKAU, JOSHUA KALSAKAU,**
Respondents

Coram: ***Hon. Chief Justice Vincent Lunabek***
Hon. Justice Daniel Fatiaki
Hon. Justice Dudley Aru
Hon. Justice Mary Sey
Hon. Justice David Chetwynd
Hon. Justice Paul Geoghegan

Counsel: *Ms F Williams-Reur and Mr H Tabi for the Appellants*
Mr A Godden for the Respondents

Date of Hearing: *17th June 2016*

Date of Judgment: *22nd June 2016*

JUDGMENT

1. On the 10th June 2016 the Respondents filed an urgent Constitutional Petition in respect of a decision of the Speaker. An urgent application for injunctive relief was filed the next day, 10th June 2016. These matters were called on for hearing before the Supreme Court on the morning of 13th June. The Court made an order restraining the Speaker from convening or opening Parliament for its first ordinary session of 2016. The Court also made Declarations and Orders in respect of the Constitutional Petition. On 14th June the Court below handed down its decision in respect of the Petition. It is against the interlocutory order and the declarations and orders that this appeal is made.

2. There is no dispute about the facts which led to these proceedings. On 19th May 2016, and pursuant to Article 85 of the Constitution, the Speaker summoned

Parliament for a two day special sitting to consider a Bill which would amend the Constitution. Article 85 reads:

> ***85. Procedure for passing Constitutional amendments***
>
> *A bill for an amendment of the Constitution shall not come into effect unless it is supported by the votes of no less than two-thirds of all the members of Parliament at a special sitting of Parliament at which three-quarters of the members are present. If there is no such quorum at the first sitting, Parliament may meet and make a decision by the same majority a week later even if only two-thirds of the members are present.*

The special sitting was to begin on 9th June.

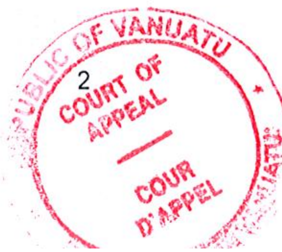
3. On 27th May 2016 the Speaker summoned Parliament for the first ordinary session of 2016. This was pursuant to Article 21(1) of the Constitution. Article 21 deals with the "Procedure of Parliament" and Article 21(1) simply states:

> *(1) Parliament shall meet twice a year in ordinary session.*

The summons set the 13th June 2016 as the first day of the first ordinary session.

4. On 9th June the 14 Respondents deliberately absented themselves from Parliament. As a result there was no quorum for the special sitting as required by Article 85. As can be seen above, Article 85 makes provision for such an eventuality. If there is no quorum, "*Parliament may meet and make a decision by the same majority a week later*". The Speaker adjourned the special sitting to 16th June.

5. As a result of that decision by the Speaker the Respondents filed the urgent Constitutional Petition and the interlocutory application a day later. They sought declarations that Article 53(1) of the Constitution had been infringed, that Article 21(1) had been infringed, that Article 85 had been infringed and that the calling of the first ordinary session was unconstitutional. They also sought orders that the first ordinary session only be convened after the special sitting had come to an end, that the first ordinary session to be held on 13th June *"be ceased"* until the special sitting had come to an end and finally, they asked for costs. The grounds put forward for seeking the declarations and orders are encapsulated in paragraph 10 of the grounds set out in the Petition, *"Since the Special Sitting was enlivened by the opening of Parliament by the First Respondent* [The Speaker and First Appellant in this appeal] *on 9th June 2016 such business must be dealt with to completion prior to the First Ordinary Session of Parliament for 2016 commencing"*. In simple terms the business of the ordinary session could not be dealt with until the business of the special sitting had been completed or the special sitting closed.



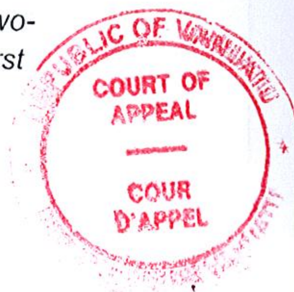
6. The first two declarations sought in the Petition in relation to Article 53 are, apart from being duplications, a nonsense. Article 53(1) is an enabling provision. It allows someone to make an application to the Supreme Court if he or she believes a provision of the Constitution has been infringed. Nothing that the Speaker was said to have done could infringe Article 53(1). Nothing the Speaker did, in itself, could possibly infringe anyone's right under the Constitution to make an application to the Supreme Court. In any event, the Court below declined to make declarations in that regard and that decision is not subject to appeal. The Court below also declined to make a declaration in respect of the alleged infringement of Article 21(1). That decision has not been appealed but it must be said that on the facts relied on by the Respondents the judge was entirely correct in refusing to make a declaration.

7. The only provision of the Constitution which remains to be considered in this appeal is Article 85. Both the Appellants and the Respondents were asked if they could indentify where, in this case, any two provisions of the Constitution were in conflict. The Appellants adopted the argument that there was no conflict. The Respondents could not point to any conflict and in the end agreed they were not alleging there was a conflict. In the circumstances it is unclear on what basis the Respondents presented the original Petition.

8. Article 85 is perfectly clear. Any Bill involving the amendment of the Constitution must be dealt with at a special sitting of Parliament. There is no restriction in the Constitution as to when that sitting can take place. As pointed out in paragraph 4 above, the Constitution provides that if there is no quorum when that Special Sitting is convened then Parliament, *"...may meet and make a decision....... a week later"*. The Constitution is silent as to how that is to be managed or arranged. It is therefore clearly a matter for Parliament to manage or arrange.

9. Article 21 deals with Procedure of Parliament. It reads in full:

> ***"21. Procedure of Parliament***
>
> *(1) Parliament shall meet twice a year in ordinary session.*
>
> *(2) Parliament may meet in extraordinary session at the request of the majority of its members, the Speaker or the Prime Minister.*
>
> *(3) Unless otherwise provided in the Constitution, Parliament shall make its decisions by public vote by a simple majority of the members voting.*
>
> *(4) Unless otherwise provided in the Constitution, the quorum shall be two-thirds of the members of Parliament. If there is no such quorum at the first sitting in any session Parliament shall meet 3 days later, and a simple*



majority of members shall then constitute a quorum.

(5) Parliament shall make its own rules of procedure."

As can be seen, Article 21(5), clearly reserves to Parliament to right to make its own rules. Parliament ***has*** made its own rules, namely The Standing Orders of the Parliament of Vanuatu. Standing Orders deal with the internal workings and management of Parliamentary business.

10. This Court has said before:

> *"The sensitive interface between the courts and Parliament has been the subject of a number of cases over many years. They include A-G v Jimmy (16 September 1996, Civil Appeal Case 7 of 1996, unreported), Van CA, President of the Republic of Vanuatu v Korman (9 January 1998, Civil Appeal Case 8 of 1997, unreported), Van CA, Tari v Natapei [2001] VUCA 18 and Vohor v A-G [2004] VUCA 22."* [1]

In that case the Court went on to say:

> *"From these previous decisions of the Court of Appeal the following principles are clear and unambiguous.*
>
> *(a) All citizens at all times in all places and in all circumstances are subject to the Constitution and entitled to enjoy the protection it provides (art 2 of the Constitution).*
>
> *(b) Under the Constitution the courts alone have the power to interpret and determine whether there has been a breach of a constitutional right (arts 6 and 53 of the Constitution). Neither Parliament, government or any other persons or body has such powers under the Constitution.*
>
> *(c) Other than in respect of an alleged breach of a constitutional right the courts will not inquire into or adjudicate upon issues arising in Parliament.*

11. When pressed, the Respondents were unable to identify any Constitutional rights which had been infringed by the Speaker adjourning the Special Sitting to a date when an Ordinary Session had already been convened. From a simple reading of the provisions of the Constitution it is quite obvious it neither permits nor forbids such a situation to occur. Quite simply, the Constitution is silent on the issue. There is no Constitutional question before this Court. It is clear the only argument being advanced by the Respondents is to the effect that they want the

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[1] *Republic v Carcasses* [2009] VUCA 46; [2010] 2 LRC 264 (16 July 2009)

Court to manage the day to day business of Parliament. As has been said some time ago [2]:

> *"It was common ground that the declaration in Article 21(5) that "Parliament shall make its own rules of procedure" is a statutory confirmation of the principle that Parliament is master of its internal business and procedures, and is not subject to direction from the courts, so long as the rulings it makes are not inconsistent with obligations placed on it by the law from which it derives its powers."*

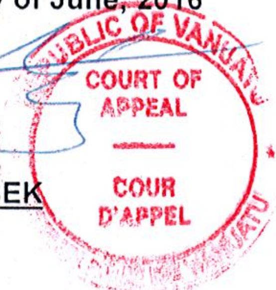
11. The law has been perfectly clear about, *"the sensitive interface between the courts and Parliament"* for many years. The Respondents have not, as they submit, raised some novel and fine point for our consideration. What they have done, for their own apparent convenience, is to ignore what has been said by the courts previously. As must have been obvious to them from the start, they should return to Parliament and resolve any problems or conflicts between the special sitting and the ordinary session in accordance with the procedures of Parliament as set out in the Constitution and Standing Orders. The Appeal must be allowed.

12. The Order made in respect of this appeal has already been specified in open court but for the sake of completeness it is:

a. The Appeal is allowed;
b. The interlocutory restraining order made on 13th June 2016 is quashed;
c. Declaration 3 and 4 of the Declarations and Orders made on 13th June 2016 are hereby quashed;
d. Orders 5, and 6 made on the 13th June 2016 are hereby quashed;
e. The order for costs made on 13th June 2016 is hereby quashed;
f. The costs of the Appeal and the costs in the court below shall be paid by the Respondents in this appeal to the Appellants, such costs to be taxed on a standard basis if not agreed.

DATED at Port Vila this 22nd day of June, 2016

BY THE COURT



Hon. Vincent LUNABEK
Chief Justice.

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[2] *Attorney-General v Jimmy* [1996] VUCA 1; Civil Appeal Case 07 of 1996 (16 September 1996)