

BETWEEN: Ham Lini Vanuaroroa and Others

First Appellant

Kenneth Natapei

Second Appellant

AND: The President The Republic of Vanuatu

First Respondent

AND: The Republic of Vanuatu

Second Respondent

Date of Hearing: 5th – 7th days of April, 2016 at 9.00AM

Date of Judgment: 15th day of April, 2016 at 4:00 PM

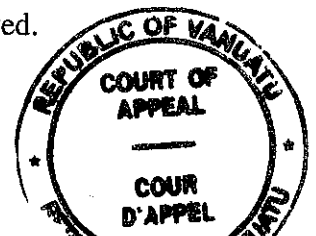
Coram: *Hon. Chief Justice Vincent Lunabek
Hon. Justice John von Doussa
Hon. Justice Ronald Young
Hon. Justice Oliver Saksak
Hon. Justice David Chetwynd
Hon. Justice Paul Geoghegan*

Counsel: *Mr Edward Nalyal for the First and Second Appellants
Mr Godden Avock for the First Respondent
The Attorney General for the Second Respondent*

REASONS FOR DISMISSAL

The President of the Republic of Vanuatu dissolved the Parliament of Vanuatu on 24 November 2015 upon advice from the Council of Ministers.

The First Appellants were then members of Parliament. The second Appellant was a newly elected member of Parliament in the by-election of October 2015 but he was yet to be sworn in as a member of Parliament when Parliament was dissolved.



The First and second Appellants filed an Urgent Constitutional Application on 1 December 2015 challenging the President's decision to dissolve Parliament. The main declaration sought was whether Parliament was lawfully dissolved by the President on 24 November 2015. The other declarations and orders sought were consequential to the determination of the main issue.

The Supreme Court heard the Urgent Constitutional Application, found and declared that the dissolution of Parliament by the President on 24 November 2015 was lawfully made pursuant to the requirements of Article 28(3) of the Constitution and dismissed the application in its Judgment dated 16 December 2015.

By letter dated 16 December 2015, Mr E. Nalyal wrote a letter to the Chief Registrar of the Supreme Court advising that the Appellants wished the General Elections to go ahead on the 22 of January 2016 as scheduled by the Electoral Office. He further advised that the Appellants will appeal the judgment of the Supreme Court dated 16 December 2015.

The Appellants filed an appeal against this judgment of the Supreme Court on 15 January 2016.

We note that the appeal filed by the Appellants does not contain or identify orders or declarations the Appellants are seeking.

On 4 April 2016, when this appeal was called over, Mr Nalyal informed the Court that he would like to obtain further instructions from the Appellants. The appeal was then adjourned to 5 April 2016 for mention.

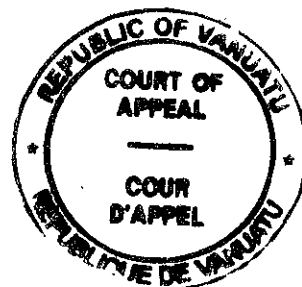
On 5 April 2016, Mr Nalyal informed the Court that he would proceed with the Appeal as the challenge is to set a precedent for the country in this type of case.

We made quite clear to Mr Nalyal that this case was decided by the Supreme Court on 16 December 2015 on the basis of its own facts and no precedent could ever be set on the basis of factual requirements.

In the present case, the trial Judge found that pursuant to Article 28(3) of the Constitution:

- There was a Council of Ministers' decision made on 15 October 2015 to advise the President to dissolve Parliament.
- The advice was conveyed to the President on 16 October 2015 by the then Prime Minister.
- The President considered the advice and dissolved the Parliament on 24 November 2015.

These facts as found and accepted by the trial Judge cannot be disputed in the present case but the constitutional factual requirements of Article 28(3) of the Constitution will be different in other cases.



Further we informed Mr Nalyal that the issue of dissolution of Parliament is not a live issue anymore. It is now a dead issue. By the passage of time, the people of Vanuatu have ultimately spoken and decided about the life of the new Parliament and government at the elections of 22 January 2016.

The issue of dissolution of Parliament has become an academic issue. The Court should not entertain such an academic and dead issue for the sake of providing constitutional opinion when the issues are no longer alive.

Mr Nalyal requested for an adjournment for him to obtain further instructions. The appeal was listed to 7 April 2016 for mention.

On 7 April 2016, Mr Nalyal informed and persisted to proceed with the appeal.

We asked Mr Nalyal to identify orders the Appellants were seeking in their appeal. Mr Nalyal did not identify any and he was unable to identify any orders the Appellants were seeking in the appeal.

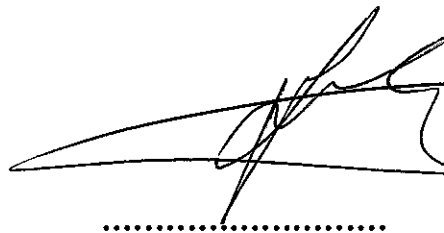
We consider that the appeal must be dismissed as there is no live issue identified in the appeal.

ORDER

1. The Appeal is dismissed.
2. There is no order as to costs in the Court of Appeal.

DATED at Port Vila this 15th day of April, 2016.

BY THE COURT



.....
Vincent Lunabek
Chief Justice

