

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

**Civil Appeal**  
**Case No. 19/3360 CoA/CIVA**

**BETWEEN: Gracia Shadrack**  
Appellant

**AND: Speaker of Parliament Simeon Seule**  
First Respondent

**AND: Republic of Vanuatu**  
Second Respondent

**Coram:** Hon. Chief Justice V. Lunabek  
Hon. Justice J.W. Hansen  
Hon. Justice R.C. White  
Hon. Justice G.A. Andrée Wiltens  
Hon. Justice V.M. Trief

**Counsel:** Mr E. Nalyal for the Appellant  
Mr N. Morrison for the First Respondent  
Mr F. Gilu for the Second Respondent

**Date of Hearing:** 13 February 2020

**Date of Judgment:** 20 February 2020

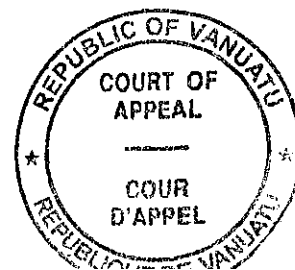
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**JUDGMENT**

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**A. Introduction**

1. On 27 November 2019, the Speaker of Parliament declared the appellant's Parliamentary seat vacant pursuant to s. 2(d) of the *Members of Parliament (Vacation of Seats) Act* [CAP. 174] (the 'Act'). The appellant filed a Constitutional Application alleging breaches of his Constitutional rights under articles 5(1)(d), 17(1) and 22 of the Constitution. This is an appeal against the dismissal of that Constitutional Application.



**B. Background**

2. The appellant was an elected Member of Parliament for the Malekula constituency. He also held the position of Second Deputy Speaker.
3. On 25 November 2019, the Speaker of Parliament summoned Parliament to meet in its 2019 Second Extraordinary Session commencing on Monday 25 November 2019 at 8.30am.
4. The first sitting of that Extraordinary Session commenced at 8.30am on 25 November 2019. When the Roll was called, the appellant was absent. The Members of Parliament present requested more time to study the several Bills for consideration in that session. Parliament adjourned to Tuesday 26 November 2019.
5. On 26 November, Parliament commenced its sitting at 8.30am. The appellant was again absent when the Roll was called. Parliament continued until 5.00pm when it adjourned. There were a number of Bills to be debated therefore Parliament suspended its Standing Orders and allowed another sitting outside of the sitting times prescribed in Standing Order 16.
6. That next sitting commenced at 5.15pm on 26 November 2019. It continued until 8.00pm. The appellant was also absent from this sitting.
7. At 10am on Wednesday 27 November 2019 the Speaker of Parliament received the appellant's letter attaching a medical certificate obtained on 25 November 2019 for three days sick leave. After consulting the Clerk of Parliament and checking the Rolls of Parliament, it was confirmed the appellant had absented himself from 3 consecutive sittings of Parliament without the permission of the Speaker. The Speaker noted that the appellant's letter was a notification and was not seeking permission to be absent or to remain absent from sittings of Parliament.
8. When Parliament resumed at 2.00pm on 27 November 2019, a motion was made for the Speaker to declare the appellant's seat in Parliament vacant. The Speaker duly declared the appellant's seat vacant pursuant to s. 2(d) of the Act.
9. The appellant filed a Constitutional Application alleging breaches of his Constitutional rights under articles 5(1)(d), 17(1) and 22 of the Constitution. The primary Judge granted a stay of the Speaker's declaration pending the final determination of the proceeding.

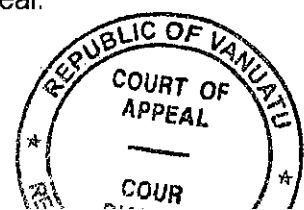


### **C. The Decision**

10. On 6 December 2019, the primary Judge held that no Constitutional rights of the appellant had been infringed or breached by the Speaker's action. Accordingly, the appellant's Constitutional Application failed and was dismissed. The appellant was ordered to pay the Speaker's standard costs as agreed or taxed, with no order as to costs for the second respondent.
11. On 12 December 2019, the primary Judge issued his written decision. He found from the evidence that the appellant had never sought permission from the Speaker to be absent from the sittings on 25, 26 and 27 November 2019. He held that the appellant had clearly failed to obtain the Speaker's permission.
12. He also found that the appellant had not even notified the Speaker of his absence. He held that despite the appellant's best efforts, his medical certificate was delivered to the wrong person instead of to the Speaker. It was delivered to Parliament's Finance Manager on 25 November 2019. On 26 November 2019 the appellant himself attended at Parliament, obtained a copy of the medical certificate from the Finance Manager, had his cover letter typed up but back-dated to 25 November 2019 and left it with a librarian with no instructions as to when and to whom it should be delivered. The letter was ultimately delivered to the Speaker on the morning of 27 November 2019. The primary Judge found that the Speaker was not informed and was not aware of the appellant's illness or medical certificate until 27 November 2019. That was a day after the appellant had already absented himself from 3 consecutive sittings of Parliament.
13. The primary Judge found that the 3 consecutive sittings that the appellant had absented himself from were on Monday 25 November 2019, Tuesday 26 November 2019 morning and afternoon, and the night sitting on 26 November 2019.
14. Accordingly, the primary Judge found that the Speaker had lawfully declared the appellant's seat vacant.

### **D. Grounds of Appeal**

15. The appellant filed his Notice and grounds of appeal before the written decision was delivered. Appellant's counsel then changed before the hearing in this Court. At the hearing of the appeal, Mr Nalyal proceeded with two grounds of appeal.



16. Firstly, it was submitted that there were only 2 sittings by the time the Speaker declared that the appellant's seat was vacant, namely Monday 25 November 2019 (adjourned to 8.30am on Tuesday 26 November 2019) and Tuesday 26 November 2019 at 5.15pm.
17. Secondly, that the Speaker in making his declaration whilst being fully aware that the appellant had given notice that he was sick denied the appellant a right of response contrary to article 5(1)(d) of the Constitution.

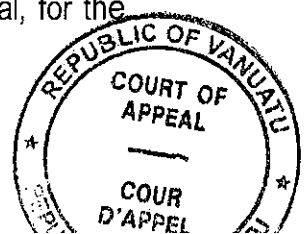
**E. Discussion**

18. It is undisputed that s. 2(d) of the Act is mandatory. As this Court stated in *Carlot v Attorney General* [No. 2] [1988] [1980-1994] Van LR 407; Appeal Case No. 4 of 1988 at p. 2:

*Section 2(d) is designed to ensure attendance by members. That purpose complies with the Constitution because its object is to make parliament effective. Its terms may appear harsh, but if the principle is valid, it is not the business of the Court to interfere with the detail. In our view Section 2(d) complies with the Constitution and is valid.*

*It was affirmed in Re Boulekone (90 of 1986) that in these circumstances vacation of the seat occurs automatically by operation of law. Once a Member of Parliament has been absent from three consecutive sittings without consent, no further procedural step is required. The seat is vacant.*

19. The appellant submitted that s. 2(d) of the Act did not apply as there were only 2 sittings of Parliament by the time the Speaker declared his seat vacant due to Parliament's suspension of Standing Orders at the conclusion of the sitting at 5pm on 26 November 2019. Counsel could not cite any authority in support of this submission. Nor was there any rationale put forward to treat this adjournment in a different manner to the adjournment on Monday 25 November 2019 to 8.30am on Tuesday 26 November 2019.
20. It was pointed out to Mr Nalyal that this point was never raised before the primary Judge. Accordingly the appellant required leave to raise this new point on appeal. If it were to be argued, the appellant would also need to adduce fresh evidence, that is, to put into evidence Parliament's record. Mr Nalyal then orally applied for leave to advance this new point on appeal and to adduce fresh evidence. Mr Morrison unsurprisingly opposed the application. We are satisfied that any grant of leave would be futile as there is no merit in any event in this ground of appeal, for the reasons set out below.



21. This Court defined "sitting" in *Carlot v Attorney General* [No. 2] [1988] [1980-1994] Van LR 407; Appeal Case No. 4 of 1988 at pages 3-4:

...

*On each day when parliament assembles and the Speaker takes the chair, there is a sitting.*

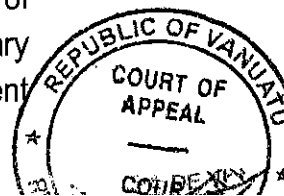
[p. 3]

...

*A Parliamentary session may be divided into meetings; meetings may be divided into sittings. But we cannot see how sittings can cease to be "consecutive" (using that word in its natural and ordinary sense) simply because they form part of consecutive meetings. If a member is absent from the last sitting of one meeting, and the first two sittings of the next meeting, he has been absent for three consecutive sittings.*

[p. 4]

22. We are at a loss to understand why counsel did not refer us to this or subsequent authorities.
23. Standing Order 16 prescribes sitting times for Parliament. In order to sit from 5.15pm on 26 November 2019, Parliament suspended its Standing Orders before it commenced that sitting. We cannot understand how Parliament's suspension of its Standing Orders before that night sitting makes that adjournment, and indeed that sitting, any different from the adjournment from Monday 25 November 2019 to 8.30am on Tuesday 26 November 2019, and the preceding two sittings on Monday 25 November 2019 and Tuesday 26 November 2019 morning and afternoon. Parliament's suspension of its Standing Orders in order to sit from 5.15pm on 26 November 2019 was in accordance with its rules of procedure. We do not see any error in its doing so.
24. Accordingly, the primary Judge's factual finding stands that the appellant had absented himself without permission from 3 consecutive sittings of Parliament on Monday 25 November 2019, Tuesday 26 November 2019 morning and afternoon, and the night sitting on 26 November 2019. There is nothing in this ground of appeal.
25. The appellant also submitted that he was denied a right of response contrary to article 5(1)(d) of the Constitution when the Speaker made his declaration whilst being fully aware that the appellant had given notice that he was sick. The primary Judge's factual finding was that the Speaker was not aware of the appellant's letter or medical certificate until the morning of 27 November 2019. By that time, the appellant had already absented himself without permission from 3 consecutive sittings of Parliament from the Speaker to be or to remain absent. We agree with the primary Judge that accordingly, the Speaker's declaration made on the floor of Parliament



was in accordance with s. 2(d) of the Act. There was no breach of any rights of the appellant to natural justice. There also is nothing in this ground of appeal.

**F. Result**

26. The appeal is dismissed.
27. The appellant is to pay each respondent VT30,000 costs of the appeal within 21 days.

**DATED at Port Vila this 20<sup>th</sup> day of February 2020**

**BY THE COURT**



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**Hon. Chief Justice Vincent Lunabek**

