

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

Civil Case No. 138/82

Judgment No. 11/82

OF 13th October 1982.

WILLIE JIMMY

and

UNION BLONG MODERET PATI (U.M.P.)

Petition to have the PORT-VILA By-Election declared void.

Coram: Mr. Justice F.G. Cooke, Chief Justice.
Miss J. Walsh, Chief Registrar.
Miss D. Toulet, Interpreter.

JUDGMENT

On the 26th day of August 1982, a By-Election was held for one seat in the Vila constituency and Barak Tame Sope was declared by the Electoral Commission elected to Parliament for the vacant seat in the Vila constituency.

This notice appeared in the Government Gazette No. 31 of the 13th September 1982.

Under the Representation of the People Act No. 13 of 1982 (herein after called the Act) section 50 (1) the validity of any election to Parliament may be questioned by a petition brought for that purpose.

Under section 51, an election petition may be presented by one or more of the following:-

- a) a person who is registered to vote at the election to which the petition relates.
- b) a person claiming himself to have been a candidate at such election.

By virtue of section 51 of the Act Willie Jimmy (herein after called the Petitioner), Union of Moderate Parties petitioned the Court on the following grounds - Attached and marked exhibit 1.

At the end of his petition, the Petitioner asked that the by-election for Port Vila be declared void and that a new electoral roll for Port Vila be established to include those voters whose names appeared on the old Port Vila electoral roll for 1979, if those voters still reside in Port Vila.

On the 11th day of October 1982, the petition came on for hearing before me.

Mr. Vincent Boulekone, Leader of the Opposition in Parliament, appeared for the Petitioner and Mr. William Kattan, the Attorney General, appeared for the Principal Electoral Officer.

The first matter before the Court was an objection by Mr. Kattan to additional grounds to the petition filed by Mr. Boulekone on behalf of the Petitioner on the 6th day of October ie. three days after the period of twenty one days allowed under section 53(1) for the lodging of petitions.

Mr. W. Kattan contended that the Court had no power to hear additional grounds of the petition as such was barred by section 53 of the Act. He further stressed that section 53 (3) stated categorically that the time limit shall not be extended -

"The time limit provided for in this section shall not be extended."

Mr. Boulekone in reply accepted that the additional grounds were dated the 6th October 1982.

He stated he based the second petition on the grounds that the Petitioner had complied with the time limit under the Act when lodging the first petition.

He submitted the Court was competent to admit additional grounds to the petition and requested that the Court apply ordinary court procedure regarding additional submission, Mr. Kattan replied stressing his original argument.

I considered the argument of both counsel and ruled that under the Act only twenty one days from the publication in the Gazette of the results of the election is allowed to a petitioner to lodge his petition.

The petition means whatever the grounds for objecting to the result of an election must be filed within the twenty one days . If additional grounds were lodged within the twenty one day period, they would be accepted by the Court. Section 53 (3) categorically states that the time limit shall not be extended.

If this subsection had not been included in the section of the Act the Court may well feel inclined to grant some latitude to the petitioner but in view of its inclusion, I hold that Parliament considered twenty one days adequate to file all the grounds of the petition.

I ruled therefore that the additional grounds of the petition being out of time cannot be argued by the petitioner.

Mr. Boulekone then made submissions on behalf of the Petitioner on the grounds set out in exhibit 1.

He stressed that it was the duty of the administration prior to any national election to ensure that all eligible citizens are registered on the electoral roll. That in order to guarantee that all eligible citizens are registered, the Act provides a procedure which permits every eligible citizen who may have been wrongly omitted from an electoral list to petition the Principal Electoral Officer (section 13 of the Act) and if he the Principal Electoral Officer does not include the name of the petitioner then he the petitioner can appeal to the Electoral Commission whose decision is final and cannot be questioned by the Court.

Mr. Boulekone submitted that the administration were negligent in not complying with the Act - prior to the by-election held in August 1982, and during the period of completion of the electoral list the Union of Moderate Parties had on many occasions drawn the attention of the Electoral Office that registration of electors was not carried out in a logical manner. That a letter was written to the Minister for Home Affairs on the 5th of August 1982 complaining that many citizens and people registered as voters in 1979 and resident in Vila had not been registered.

Again the boundaries of the municipality were changed which made approximately three hundred (300) persons not eligible to vote. He stressed there was no requirement in law that the old list should be relied on. He stated that on the 4th of June 1982 the registration officers returned the registration list to the Electoral Office:- Three thousand seven hundred and forty eight (3748) electors had been registered.

The registering officers had reported that some persons had refused to register and others had barred entry to their homes. On the 4th of June 1982 the Electoral Office by radio messages and by notice in Tam Tam asked any of those who had not registered to do so at the Town Hall or Electoral Office; that one hundred and eighty five (185) registered in the period the 4th of June to the 26th of June 1982. That the provisional electoral roll was made available from the 1st to the 16th of August 1982 and that during that period no petition was received by the election office or electoral officer alleging that a person had been omitted from the electoral list.

Mr. Kattan had further submitted that the number of registered voters in 1979 was five thousand two hundred and sixty five (5265) but that this figure was including one thousand and eighty two non-citizens (1082).

It also included two hundred and thirty six (236) who would not have been able to vote because of the boundary change.

If the 1979 figure of 5265 is reduced by the aforesaid figures, it is almost identical with the figure of those registered.

Further that out of the three thousand nine hundred and thirty three (3933) nine hundred and twenty (920) did not vote.

Mr. Kattan called Mr. Etienne Kombe the Principal Electoral Officer who confirmed on oath the details submitted by Mr. Kattan.

Mr. Kombe handed in exhibit 5 as an example of the area a registration officer had to cover. Also exhibit 6, the registration list, exhibit 7 the blue registration card and exhibit 8 the duplicate card to be returned to the electoral office. He stated that to ensure electors were at home, houses were visited between 5 and 10 pm.

Mr. Kombe stated he did not reply to the letter exhibit 2 because it was addressed to the Minister for Home Affairs and he only received a copy. He stated that the letter was not a petition asking for the inclusion or omission of anyone in particular from the electoral list as required by section 13 of the Act, or indeed did the letter (exhibit 2) specify the name of any person to whom an answer should be given.

Further that he did not agree with the contents of the letter that many Ni-Vanuatu persons were barred from registration. Mr. Kombe was cross examined. This was the only witness called by the Attorney General.

Mr. Boulekone then made his final submission stressing that as the electoral office started the election registration by house to house registration they should have continued in that way and not rely on radio as some citizens did not possess such or Tam Tam which may not have been purchased by some citizens.

He again asked for the election to be declared void and that an inquiry to be made by the Court into the manner of registration.

Mr. Kattan the Attorney General replied again stressing the law. In my opinion the law is clear and Parliament in its wisdom considered that the new Act was adequate to deal with all matters relating to elections to Parliament - Vanuatu being a democratic country no compulsion is placed on anyone to register as an elector or to vote in an election.

From the evidence before me it is clear that the electoral office were not negligent in the procedure used to register the names of electors.

The teams actually registered 3933 persons by house to house registration. Then announcements were made on the radio and notices published in Tam Tam calling on persons who had not been registered to come and register at the Town Hall or the Electoral Office resulting in the registration of another 185 persons.

The cards of only four persons on the 1979 roll who did not take the trouble to have their cards replaced by cards of 1982 were submitted to me by Mr. Boulekone exhibits 3 (1) (2) (3) and (4).

No other person came forward contending he had been deprived. There is no evidence before me to show that numerous persons did not register or were unable to register due to negligence by the administration or the electoral office.

It is so easy to presume events but the Court is only interested in proved facts before it can accept such.

Three thousand and thirteen (3013) voters cast their votes in the By-Election leaving nine hundred and twenty (920) voters registered who did not even take the trouble to vote.

I believed the Electoral Officer Mr. Kombe, when he said that every effort was made by his department to ensure that any person eligible to vote was registered.

Letters of complaints to Ministers or Electoral Officers are not the correct procedure. The Act has provided machinery (section 13) for persons omitted from the register to file a petition. That is the procedure to follow and that only.

Mr. Boulekone requested that I open an inquiry to establish the manner in which registration was carried out in Port Vila.

There is no provision in the Act to allow me to comply with such a request even if I thought it necessary but as I have said aforesaid I believed the administration and the Principal Electoral Officer had been fair and energetic in this attempt to have all persons eligible registered.

I accordingly dismiss the petition and declare that Barack Tame Sope, the person whose election is questioned was duly elected.

Dated at Vila this 13th day of October 1982.

The deposit paid by the petitioner less court fees of 2000vt will be returned to him.

Frederick G. Cooke

FREDERICK G. COOKE.

Chief Justice.