

(Civil Jurisdiction)

**BETWEEN :**

**Samson Kilman, John Takale,  
Rory Hānghang, Ezekiel Raha,  
Justine Telemb, Willie  
Harrison, Allan Kalsal, Noel  
Tamata, Astrophile Mwele,  
Willie Harrison, Morris  
Manmelin, Philip Kalmasei,  
Solomon Meltor, Fred Moses,  
Robinson Navong, Narai  
Yapese, James Tamata, Mark  
Tom, Arnold Wabbak, Wilton  
Toa, John Fiandre, Masden  
Garae, Samson Garae, Joseph  
Rihu, George Kalran, Fred  
Kalkaua, Moses Peter, Danstan  
Huri, Kalmase Philip all of  
Vanuatu Soldiers  
Petitioners**

**AND:**

**The Attorney General,  
representing the Government of  
the Republic of Vanuatu  
Respondent**

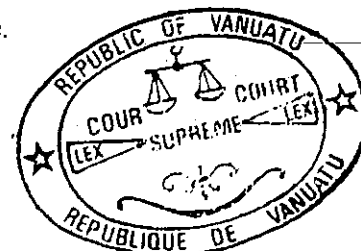
Mr. J. Malcolm for the Petitioners

Mr. Ishmael Kalsakau of the Attorney General Chambers  
representing the Government of the Republic of Vanuatu.

**INTERLOCUTORY JUDGEMENT**

By Petition dated 7 January and filed on 10th January 1997, the Petitioners through their Counsel apply to the Supreme Court for the Exercise of its jurisdiction under Articles 6 and 53 of the Constitution and pursuant to Section 218 of the Criminal Procedure Code Act CAP 136 seeking for the following Orders :

1. Affording each of the Applicants herein together with any other parties charged with similar offences a lawyer.
2. Setting the matters down for trial within a reasonable time.
3. Staying all proceedings pending Orders 1 and 2 hereof.
4. Granting bail pending Orders 1 and 2 hereof.



This matter should have come before me in Chambers. But since there are quite a few numbers of the Petitioners including their relatives, I think it is appropriate and in the public interest to deal with the matter in open Court and of course allow in members of the general public.

On the 27 January, the matter was adjourned to be heard on 31st January 1997.

**Preliminary matters :**

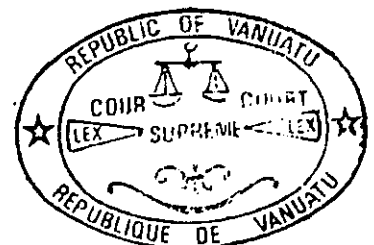
This is a Constitutional Petition. By looking at all points contained in the Petition, it is to be noted that only point 1 of the Petition which states to the effect that "each of the Applicants... be afforded ... a lawyer " has some relevance under Article 5(2)(a) of the Constitution. Points : 2, 3, and 4 of the Petition have no relevance at all in this Constitutional Petition. They should have been adequately dealt with under the criminal jurisdiction in which the Public Prosecutor, who is the competent authority dealing with these points, is in a better position to address the Court on these issues. In this instant Petition, it is my view that they should be dismissed as issued before a wrong Court. If the Petitioners wish to take these points further, they should do it under the criminal jurisdiction.

Point 2 of the Petition dealt with the setting the matters down for trial with a reasonable time. I presume that the trial date is for the criminal Court to fix but not by a Constitutional Court. Point 3 of the Petition dealt with the staying of all proceedings pending orders 1 and 2 hereof. Again here, the proceedings to be stayed are all criminal proceedings and such application should have been made before the criminal Court not before the Constitutional Court. Point 4 of the Petition dealt with granting bail.... Bail applications were made before the criminal Court and were subsequently refused.

It is plain that the Petitioners, here, through their Counsel attempted to introduce the issue of Bail in the Supreme Court sitting as in its Constitutional Jurisdiction. It is to be noted that the inherent jurisdiction of the Supreme Court to grant bail is undisputed but I have to address my mind on whether a defendant who is refused bail by a Supreme Court Judge can make successive applications to the same judge sitting in a different jurisdiction of the Supreme Court, i.e., for example, in its Constitutional jurisdiction such as in the present petition ; or whether a defendant who is refused bail by the Supreme Court Judge can make successive applications to other judges of the Supreme Court . This practice is known colloquially as "bail shopping".

In this instant case, it is not "bail shopping" before different judges, rather it is "bail shopping" before the same judge of the Supreme sitting in a different jurisdiction. It is my view that successive applications for bail to different Supreme Court Judges or the same Supreme Court Judge sitting in different jurisdiction of the Supreme Court should not be allowed save where circumstances have altered and new grounds for the granting of bail are available and this application for bail should only be made before the Supreme Court Judge sitting in its Criminal Jurisdiction but not in the Constitutional Court as in the present case. In England it has been held that it is not permissible to make successive applications of this kind (see in *Re Hastings (No.3)* (1059) 1 ALL ER 698). This case was applied in *Re Kray (1965)* 1 All 710).

Points 2,3 and 4 of the Petition were, thus, struck out.



**BASIS of LAW :**

In this Petition, the Petitioners refer this Court to Article 5(2)(a) of the Constitution. In order to understand what Article 5(2)(a) says, I will start by quoting Article 5 (1) of the Constitution which states, inter alia, that :

Article 5(1) : "The Republic of Vanuatu recognises, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race , place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health.

(a) .....

Article 5(2) : Protection of the Law shall include the following :

(a) everyone charged with an offence shall ..... be afforded a lawyer if it is a serious offence."

It is important to note that the Basis of this Petition according to the Petitioner's Counsel is that :

The Petitioners were charged with serious offences, Mr. Malcolm found himself in a position of conflict of evidence, he, thus, could no longer represent them. They request by this Petition to be afforded a lawyer under Article 5(2)(a) of the Constitution.

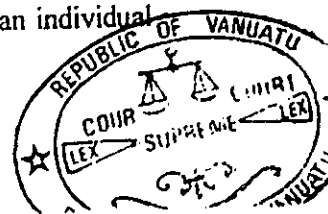
I will now set out the legal basis upon which such applications can be made to the Court :

Article 6 of the Constitution reads :

- 6(1) Anyone who considers that any of the rights guaranteed to him by the Constitution has been, is being or is likely to be infringed may, independently of any other possible legal remedy, apply to the Supreme Court to enforce that right.
- 6(2) The Supreme Court may make such Orders, issue such Writs and give such directions, including the payment of compensation, as it considers appropriate to enforce that right.

Few observations are needed to be made at this stage. As I have indicated above, the Petitioners say that they have under Article 5(2)(a) of the Constitution a right "..... to be afforded a lawyer" as they were charged with " Serious Offences".

It is important to note that Article 6 of the Constitution is the appropriate Article to enforce a fundamental right which is enshrined in the Constitution under Chapter 2 - Part I - Fundamentally Rights. Therefore, under Article 6 of the Constitution an individual has a personal right, independently of any other possible legal remedy that he may have, to apply to the Supreme Court to enforce that right. It is important to bear in mind that it is a right to enforce an infringement/violation or breach of a fundamental right contained in Chapter 2 - Part I of the Constitution. In other words an individual



can only apply under Article 6 of the Constitution if any of the rights guaranteed to him under Chapter 2 - Part I, has been, is being or is likely to be infringed and nothing else.

The Petitioners rely also on Article 53(1)(2) of the Constitution which states :

53(1) "Anyone who considers that a provision of the Constitution has been infringed in relation to him may, without prejudice to any other legal remedy available to him, apply to the Supreme Court for redress.

53(2) The Supreme Court has the jurisdiction to determine the matter and to make such Order as it considers appropriate to enforce the provisions of the Constitution.

Equally, it is also important to note that under Article 53 of the Constitution an individual has a personal right, above and beyond any other legal rights and remedies that he may have, to seek redress from the Supreme Court if any Constitutional provisions have been infringed with regard to him. It is a right for redress for an infringement of a Constitutional provision and for nothing else. (See Civil Case No.29 of 1996 Hon. Rialuth Serge Vohor and others -v- Hon. Donald Kalpokas and others).

It seems to me that there is duplicity by issuing the Petition under articles 6 and 53 of the Constitution. In this instant Petition it suffices to say that the Petitioners may rely only on Article 6 of the Constitution. Yet they rely also under the provisions of Article 53 of the Constitution. The fact that the Petitioners apply to the Supreme Court under Articles 6 and 53 of the Constitution does not vitiate or render the Petition nugatory. On the contrary, by applying under these two (2) Articles of the Constitution, the Petitioners seek to reinforce and consolidate their Petition.

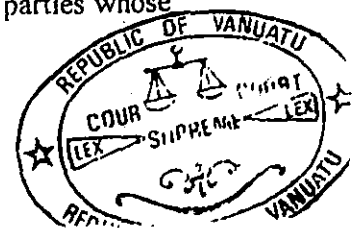
In any event, we have before the Court a Constitutional Petition. The grounds of the Petition are contained in the Petition with a Supporting Affidavit of Mr. Samson Kilman who is one of the Petitioners.

The procedure to be followed for bringing before the Court such applications is to be found in Part XIII of the Criminal Procedure Code Act CAP 136, under Section 218 of that Act and the relevant parts of which say :

218 (1) Every application to the Supreme Court for the exercise of its jurisdiction under Article 6, 53(1), 53(2), .... of the Constitution shall be by Petition and shall be valid no matter how informally made.

(2) The Supreme Court may on its own motion or upon application being made therefore by any party interested in the Petition summon the Petitioner before it to obtain any further information or documents it may require.

(3) The Petitioner shall, within 7 days of the filing of the petition in the Supreme Court or within such longer period as the Court or within such longer period as the Court may on application being made therefore order, cause a copy of the petition together with copies of supporting documents filed in relation to such petition to be served on the party or on all those parties whose actions are complained of.



(4) Any party who is served with a copy of the petition in pursuance of Subsection (3) may without prejudice to any other legal remedy available to such party apply to the Supreme Court for an order dismissing the petition on the ground that the petition is without foundation or vexatious or frivolous.

(5) Unless the Supreme Court shall be satisfied in the first instance that the petition is without foundation or vexatious or frivolous, it shall set the matter down for hearing and inquire into it. It shall summon the party or parties whose actions are complained of to attend the Hearing.

As I have mentioned earlier, the practice in these Court is that the initial application for leave to petition pursuant to the above Act and any subsequent applications to discuss the petition pursuant to Section 218 (4) is done in the secrecy of chambers. In this case, because of the general public interest in the matter and in the interest of the Petitioners themselves and their relatives, it is exceptional that the Court allowed in members of the general public.

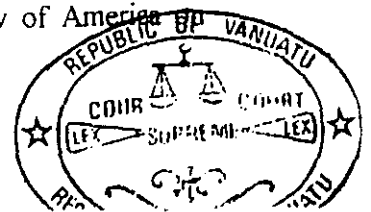
### Brief Background of this Case :

The Petitioners were a group of members of Vanuatu Mobile Force who were allegedly involved in an incident which took place on 12 November 1996 and as a result criminal offences were alleged to be committed by the Accused/Petitioners. They were subsequently arrested and remanded in custody after applications for bail were refused to them. Mr. Malcolm represented each and everyone of the Petitioners since the commencement of the criminal proceedings until the hearing of the Petition before the Court. Preliminary Inquiries were already conducted. The Petitioners/Accused were committed to stand trial before the Supreme Court for a reasonable date to be fixed.

Mr Malcolm when stating briefly the background of this case, informed the Court that there are other 55 Accused persons charged with more than 200 offences and he said the basis of the Petition is for this Court to interpret the expression "everyone charged with an offence shall ... be afforded a lawyer if it is a serious offence..." contained in Article 5(2)(a) of the Constitution.

It is accepted for the Petitioners that there will be fair hearing before the Court but because of the complexity of this case due to the numerous Petitioners and because of the possible conflict of interest between the Co-Defendants, Mr Malcolm found himself in a difficult position and therefore invited this Court to consider whether each Petitioner should be afforded a lawyer, for they were charged with serious offences.

It is therefore, submitted on the one hand, that there is no previous or similar cases of this nature in Vanuatu. There are a number of multiple Defendants, waiting trial currently before the Court and accordingly there is a degree of public interest in resolving this matter. On the other hand, it is submitted then that the provision in Article 5 (2) (a) of the Constitution is equivalent to the Sixth Amendment of the Constitution of America as detailed in the Miranda Case to the effect that the person is entitled to a lawyer if charged with a criminal offence and if unable to afford one to be provided one by the state. The Court was then referred to the law of America



Multiple Representation in considerations of the sixth Amendment and it is thus, respectfully submitted for the Petitioners that the legal principles as applied in the United States of America are equally applicable in Vanuatu in Multiple Representative action.

The Court was provided with a copy of the American case of Julius T. Cuyler, Superintendent, etc. al., Petitioners -v- John Sullivan 446 VS335, by LED 2nd 333, 100 SCT 1708. In this case, the question presented is whether a state prisoner may obtain a federal writ of habeas corpus by showing that his retained defence counsel represented potentially conflicted interests.

In this particular case, the U. S Supreme Court decided that showing by state prisoner that retained defence counsel represented potentially, as opposed to actual conflicting interests, held insufficient for federal habeas corpus relief.

In this instant petition, it is submitted for the Petitioners that, Mr Malcolm who acted and represented the Petitioners in the early commencement of the criminal proceedings and until the present Petition, found himself in a difficult position of conflict and therefore, can no longer act on their behalf. It is also put for the Petitioners that the Public Solicitor, because of his involvement in the swearing in of other Members of Vanuatu Mobile Force and by the fact that his office acted for one of the Member of the Vanuatu Mobile Force who will be probably called by the Prosecution as a witness, thus, against the interest of the Petitioners, render the position of the Public Solicitor also in conflict, thus, cannot effectively represent the Petitioners/Accused.

It is therefore submitted for the Petitioner that the Court can consider the meaning of the expression "...shall be afforded a lawyer ...". The Petitioners say that the very fact that Mr Malcolm does act and represent them since the beginning of these proceedings do not constitute or cannot be considered to be a waiver of their Constitutional right to "...be afforded a lawyer ..." by the state contained in Article 5 (2) (a) of the Constitution.

On Monday morning 31st January 1997, Mr I. Kalsakau, on behalf of the Respondent applies for the Petition to be dismissed on the grounds that it is without foundation, vexatious and frivolous pursuant to Section 218 (4) of the Criminal Procedure Code Act CAP 136.

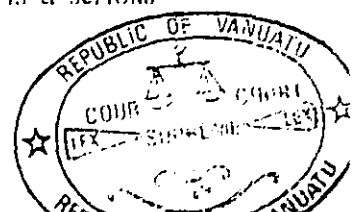
Submissions were made for the Respondent in respect to that application. I will deal with some of them in term.

### Interpretation of the Constitution.

The task of interpreting a written Constitution such as ours, is not an easy one. The interpretation of the Constitution is the sole preserve of the Supreme Court, as delegated by the People to it through the Constitution, the Court has to be responsive to the Constitutional values. The Court when interpreting the Constitution must adopt a broad-oriented and purposive approach directed towards advancing the Constitutional objectives taking due account to the country circumstances and resources.

How then to interpret Article 5 (2) (a) which states:

*" everyone charged with an offence shall.... be afforded a lawyer if it is a serious offence;"*



Article 5(2)(a), it seems to me, is directed to three situations :

- (i) where the Accused wishes to defend himself in person ;
- (ii) where he wishes to choose his own legal assistance, and
- (iii) where, because he has insufficient means to pay for legal assistance, it is afforded/or assigned to him.

The reference in the first (i) situation of his own personal representation before the Court without assistance of a lawyer if the accused person so wishes, creates no difficulty to understand. The reference in the second (ii) situation to choosing his own legal assistance is intended only to mean that the accused has the means to choose that assistance rather than have it afforded/assigned to him.

As to the reference in the third (iii) situation above, it is common ground that when a person has no means or has insufficient means to pay the costs of a lawyer and was charged with a serious offence, it is the responsibility of the State Republic to assign or afford him a lawyer.

Article 56 of the Constitution provides for the office of the Public Solicitor, whose function, shall be to provide legal assistance to needy persons. (See also Section 5(1)(a) of the Public Solicitor Act CAP 177) and to any person when so directed by the Supreme Court. (Section 5(1)(b) of the same Act).

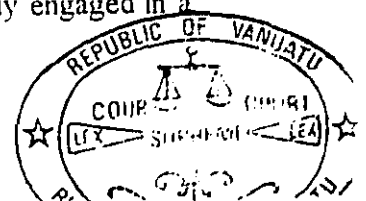
The Public Solicitor's office was established by the State Republic in order to provide legal assistance to person qualified under the scheme "needy person" at the expense of the State Republic.

Therefore, for the purpose of interpreting Article 5(2)(a) of the Constitution, right to be afforded a lawyer... and in order to give its full meaning, I hold the view, that Article 5(2)(a) shall not be interpreted in isolation, rather it has to be read together with Article 56 of the Constitution.

If a person has no means at all or has insufficient means to pay for legal costs, the State Republic has an obligation to provide him/her with a lawyer. That person is elected "needy person" or a person so directed by the Supreme Court, his right to choose a lawyer is limited or qualified in the sense that that person cannot force the State Republic to pay for a lawyer of his own choosing.

It is important to realise that the consequences of an absolute right of the accused person to have a particular counsel chosen would raise some very practical problems for the State Republic.

What if the particular counsel chosen by the accused is one of the best Defence lawyer in the world. Obviously, it will cost the State millions of Vatu, just for one case. How about the situation where there are quite a lot of accused persons each of them exercising their purported right of choosing their own lawyer. This would mean the bankruptcy of the State Republic bearing in mind of the limited resources of the State. Again what if the particular counsel chosen by the accused was already engaged in a



long trial and unavailable? Would there be some objective test to be applied to the reasonableness of the choice made by the accused? It is, thus, vitally important to understand that without some such qualification the Courts would be at the mercy of every whim of the accused. (on the same line of thoughts see the judgement of Hunt CJ at CL. in *Re Thomas Robert Sandford*, Court of Criminal Appeal (NSW) (1994) 72 A. Crim R. 160 at P. 167)).

That person must rely only upon the legal services that are offered by the state. There is no Constitutional right to require the State to provide unlimited funding for defence of a case, even a murder case. (which can go far beyond the availability of the resources of the State). If authority is needed, reference can be made to a Canadian case: *R -v- Munroe (1990) 57 CCC. (3rd) 421, 97 N.S.R. (2nd) 361 (S.C.), affd 59 CCC (3rd) 446, 98 N.S.R. (2nd) 174 (C.A.)*.

In that respect, I agree with the submission made by the Respondent that the "needy person" has no right to choose his own lawyer at the expense of the state. On the contrary, such legal assistance shall be provided by the services that are readily available by the State. If that person decides to choose his own lawyer, this is intended to mean that that person has the means to choose that legal assistance rather than have it afforded by the State.

I accept therefore the Western Samoa case reference by the Head of State (1989) LRC (const.) as a persuasive authority on the point which is of relevance here.

In that case, one of the questions answered by the Court was the following:

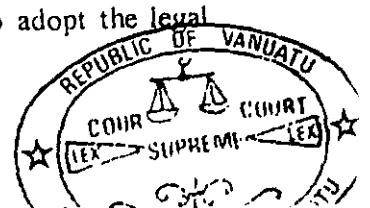
- (1) Did Article 9 (4) (c) of the Constitution (right to a fair trial) required the State to furnish person charged with an offence with free legal assistance if he had insufficient means to pay for legal assistance and the interests of justice so require;
- (2) If the answer to that question was "Yes", did Article 9 (4) (c) require the State to furnish every such person with legal assistance of his own choosing?

Answering those two (2) questions, the Supreme Court of Western Samoa held that:

*"It was the States responsibility to pay for legal assistance where the offender had insufficient means. However, the State obligation was limited to provide Defendants with free legal assistance and there was no right of choice reserved to an offender once he entered upon that scheme. His minimal rights were guaranteed under Article 9 (4) (c) of the Constitution and it would be unreasonable to extend that right to Counsel of choice. It was for Parliament to determine how the legal aid scheme was to be funded and not for the Court to determine in such matters" (p.678).*

#### Multiple representation and conflict :

The Petitioners invite this Court to interpret Article 5(2)(a) "be afforded a lawyer" so as to obtain an order from this Court to enable each of the Petitioners to be afforded a lawyer of their own choice. It is further suggested to this Court to adopt the legal

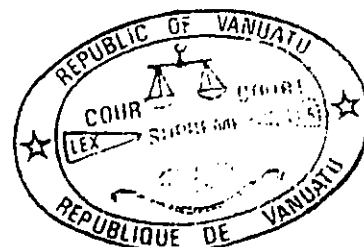




Principles applied by the United States of America in respect to the law of multiple representation. I doubt whether we can go too far unless Vanuatu State has sufficient means to follow such American legal principles. This does not constitute a denial of the Constitutional right of the Petitioners to "be afforded a lawyer". It has to be noted that a minimum right is guaranteed under Article 5(2)(a) of the Constitution and that right is that the Petitioners will be afforded legal assistance which is readily offered by the State through the office of the Public Solicitor under Article 56 of the Constitution. And obviously, it would be unreasonable to extend that right to counsel of choice.

The Affidavit of Mr. Baxter Wright which was filed in support of the Respondent shows that in Vanuatu there are numerous instances of multiple defendants all being represented by one counsel. PP -v- Walter Kota and others. In 1988, fifty seven defendants were charged with riot and offences arising out of 16 May Land Right demonstrations. All defendants were represented by Peter Coombe, all defendants pleaded not guilty. In early 1989, a group of about twenty five defendants from Erakor were charged with offences of unlawful assembly and Arson arising out of riot in Erakor. They were all represented by the Public Solicitor. In the Political Coup case of 1988, Sokomanu, Sope, Carlot, Jimmy, Naupa, Kalotiti, all pleaded not guilty to all charges and were all represented by the same counsel at trial and on appeal. The defence run by each of the six Defendants were far from the same in each case. These examples tend to show that the problem of multiple representation is not new in this jurisdiction and it has been dealt with locally according to resources locally available and thus, under the laws of this Country.

- As to the conflict, the Respondent contended that the Affidavit of Samson Kilman which supports the Petition, states that the Petitioners have been advised that the Public Solicitor is unable to act for the Petitioners by reason of a situation of conflict.
  - Yet, the Respondent, further, says that the office of Public Solicitor has produced an affidavit (see affidavit of Reynold Liu) which certified that none of the Petitioners sought the assistance of the Public Solicitor nor was there ever any representation from the office of the Public Solicitor that disclosed a conflict.
- It transpires then that the potential conflict put forward by the counsel of Petitioners, is a mere speculation. The Petitioners, if they refused to retain the legal assistance of Mr. Malcolm as their solicitor, may attend the Public Solicitor's office to seek for legal assistance. It is the Public Solicitor who should advise that there is or is likely to be a situation of conflict. The Petitioners may elect to retain Mr. Malcolm services and in that case, they must be informed that they waived their right to be afforded a lawyer by the State as the only legal services readily available and at the expenses of the State are these provided by the Public Solicitor's office. We have no other legal aid system in Vanuatu. On that point the Court cannot use its judicial power to order the State to pay for the Petitioners retained counsel. It become thus, a private matter between the chosen counsel and the Petitioners whether the retained counsel will act on a pro bona basis or act for a fee to be paid by the Petitioners.
- It is important to repeat again, that there is no Constitutional right to require the State to establish provision of unlimited funding for defence of a case, even a murder case.



## Status of the Constitution

The Respondent contended that the Petitioners rely upon Article 5(2)(a), 6 and 53 of the Constitution to petition this Court on such basis that their right guaranteed by the Constitution have been, are being or are likely to be infringed if they are not afforded a lawyer. The Respondent submits then that the actions of the Petitioners resulting in the kidnapping amongst one or two others at the gun point, the President of the Republic of Vanuatu, the Defender of the Constitution, has the effect of suspending the operation of the Constitution. As a result, the Respondent submits the Petitioners voluntarily decided to waive any rights they have under the Constitution in that they have knowingly and intellectually involved themselves in the purported actions. It would therefore be a mockery of justice if the Petitioners are permitted to invoke the Constitution now as a speedy assistance to them.

Quite clearly, these submissions cannot be sustained. In my view the Constitution is not just a piece of legal document specifically reserved for certain category of persons. The Constitution is a living corpus of rights and duties together with underlying Constitutional and/or legal principles upon which the Vanuatu Society is established and now deeply rooted. As such, everyone in Vanuatu is entitled to apply to the Supreme Court to enforce the infringement of his/her Constitutional rights. This equally applies to anyone irrespective of his status including the prisoners and those charged with serious criminal offences like the present Petitioners even if they have purportedly attempted to suspend the effective operation of that very Constitution.

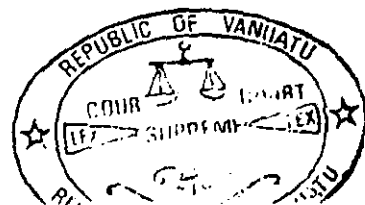
## Status of the Respondent

I agree with the Respondent that the Attorney General, has always represented the Government and the Government has always been a respondent to any petition made pursuant to Article 6 and 53 of the Constitution where it has been alleged that the Government has purported to endorse actions that amount to a violation of the grievance's Constitutional right. That is a correct position.

However, the difficulty is that when a Petition was filed and the government was cited as the respondent, the Attorney general cannot refuse to represent the Government as the Respondent. It is my view that the Attorney General should be cited as the Respondent, representing the government of Vanuatu and then applies under Section 218(4) of the Criminal Procedure Code Act CAP 136 to dismiss the Petition. The Court cannot dismiss the Petition on its own motion. It is the party whose action is complained of, to show that the Petition has no cause of action to be sustained and thus, should be dismissed.

## Cause of Action of the Petition

The instant Petition proceeds on the basis that the Petitioners have a Constitutional right to be afforded a lawyer by the State under Article 5(2)(a) of the Constitution. The petition was issued under Articles 6 (1)(2) and 53(1), (2) of the Constitution. Article 6(1)(2) of the Constitution can be of assistance to the Petitioners only if their right to be afforded a lawyer under Article 5(2)(a) of the Constitution, have been, are being or are likely to be infringed by the Respondent. Equally, Article 53(1) and 53(2) can be of assistance to the Petitioners only if any provision of the Constitution has been infringed in regard to each of the Petitioners by the Respondent.



It is common ground to note that the fact that you have a right under the Constitution does not give you a personal right to claim for that right under Article 6 and 53 of the constitution.

Article 6 of the Constitution becomes operative only if the Constitutional rights of the Petitioners have been, are being or are likely to be infringed/violated/breached by the action and/or omission of the Respondent.

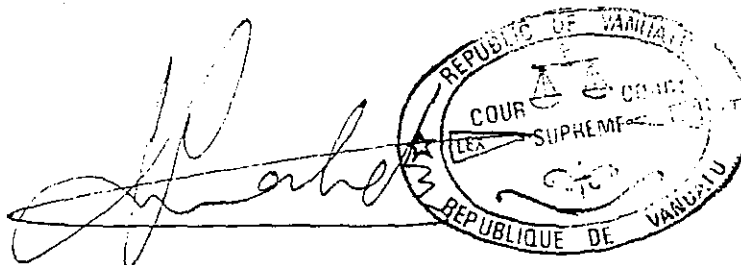
Equally, Article 53 of the Constitution becomes operative only if the Constitutional Provision has been infringed in regard to each of the Petitioners by the action of the Respondent.

In this case, Counsel for the Petitioners conceded that although, the Petitioners have a right to be afforded a lawyer by the State, the Petitioners have never exercised nor attempted to exercise their right under Article 5(2)(a) of the Constitution until the hearing of this Petition. The Respondent/Government has never had any opportunity to infringe, violate or breach the exercise of the Petitioners' Constitutional rights. The Petition has no cause of action, it is therefore without foundation and I so rule and dismiss it under Section 218(5) of the Criminal Procedure Code Act CAP 136.

I order no costs.

Dated at Port-Vila this 7th February 1997

BY THE COURT



.....  
VINCENT LUNABEK J.  
Acting Chief Justice