

**IN THE SUPREME COURT OF
REPUBLIC OF VANUATU**

Civil Case No.95 of 2002

(Civil Jurisdiction)

**BETWEEN: REME VATAMBE
Plaintiff**
**AND: THE ELECTORAL
COMMISSION OF THE
REPUBLIC OF VANUATU
Defendant**

Coram : Justice R J Coventry

Counsels: Mr. Kalkot Mataskelekele for the Plaintiff
Mr. George Nakou for the Defendant ✓

State Law Office
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23 May 2002

by hand

JUDGMENT

On 2nd May 2002 a general election was held. The plaintiff, Rene Vatambe stood as a candidate in the Santo constituency. He says that on 20th May the official declaration of votes cast for each candidate under Rule 21 of the Election of Candidates Rules (made under the Representation of the People Act) was made by the Electoral Commission. That shewed he received 846 votes and he was duly elected to Parliament.

Two days later on 22 May a second declaration was made. This time it shewed he had only received 445 votes and he was not elected. He said his unofficial count shewed he obtained more votes than that and that excluded 16 polling stations.

The plaintiff says once a declaration is made it cannot be changed, unless a petition is brought to the Supreme Court. Further, he says, the Commission has no power to recount votes, except on Order from the Supreme Court, and that there was improper influence upon the Commission between the two declarations.

The defendant, the Electoral Commission, rejected these arguments. They accepted two declarations had been made. They said after the first declaration it was noticed there was an error or errors in the first declaration – the total of valid votes cast should have been the same as the total of votes for each candidate. It wasn't. The Commission denied the changes were made at the request or direction of the government, any political party or individual candidate. No recount of votes was carried out. It was a cross-reading or typing error.

Counsel for the Commission argued that the results were not official until published in the Gazette, as required by section 38 of the Act. There had been a declaration of votes cast for each candidate under Rule 21 (1), and when it was noticed there was an error it was corrected. Counsel argued it would be unfair to the candidate elected and to the voters of Santo if, through a clerical error, a person became a Member of Parliament who had not received enough votes, and someone who had was excluded. Counsel also argued the first declaration could not be valid as there was clearly an error on its face. If there is a challenge about the counting or conduct of the poll it should be done by petition.

The Rules do not specifically state the moment when a candidate is declared elected. Rule 21 (1) requires the announcement of the votes cast for each candidate. Both declarations were made under Rule 21 (1). Rule 21 (2) states “ the number of candidates counting down from the candidate who obtains the highest number of votes in order of the votes obtained that equals the number of seats allocated to that constituency shall be declared elected”.

Counsel for the plaintiff says that must automatically happen by the declaration of the numbers. He says publication in the Gazette, is just that, a publication of what has happened. Neither the Act nor the Rules say the candidate is elected upon publication in the Gazette.

Counsel for the defendant argued the votes shall be declared elected refers to section 38 which states “ as soon as practicable after an election the Electoral Commission shall cause the results to be published in each constituency in such manner as it considers appropriate and in the Gazette”.

Article 20 of the Constitution states " The Electoral Commission shall have general responsibility and shall supervise... the conduct of elections to Parliament."

At the heart of this matter is the fact that the Commission says an error was made in declaring the number of votes for each candidate in the Santo Constituency as notified by the registration officer. That error was corrected two days later.

The votes cast and conduct of the election and figures supplied to the Commission by the registration officer may be challenged by petition. What is sought is a declaration that this plaintiff was elected when the Commission after checking says another candidate was elected. If that declaration was made it would mean a candidate with fewer votes than required to qualify would take a seat and one with more was excluded, at least until a petition was heard.

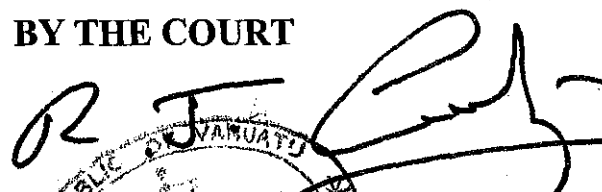
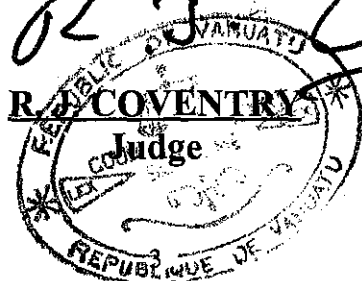
I refuse to make the declarations sought in the Originating Summons. It was clear on the face of the first declaration by the Commission there was an error. The figures simply did not add up. That could not be a valid declaration under Rule 21. When this was brought to the Commission's attention a check was made without attempting a recount. The second declaration was then made. The figures on the face of that were consistent. Accordingly, I find that was the valid declaration. It was published in the Gazette.

This does not preclude Reme Vatambe from lodging an election petition if he wishes to pursue some of the matters he has raised in this case. However, I must refuse the declaration he seeks in this case.

Having heard counsel each party will bear its own costs.

DATED at Port Vila, this 03rd day of June 2002

BY THE COURT



REPUBLIC OF VANUATU
R. J. COVENTRY
Judge
REPUBLIC OF VANUATU