

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

(Civil Jurisdiction)

**ELECTION PETITION CASE No.01 OF 2008**

**IN THE MATTER OF:**      **THE REPRESENTATION OF THE PEOPLE ACT  
[CAP.146]**

**BETWEEN:**      **JACK MOWA, ISABEL DONALD, IOANE  
SIMON, BENJAMIN KORAH, SAM OBED,  
ORAKA KELIU, PHILIP ORAKA AND DAVID  
SUMA of Epi Island in the Republic of Vanuatu**  
**Claimants**

**AND:**      **THE ELECTORAL COMMISSION of Private  
Mail Bag 9033, Port-Vila, Efate in the  
Republic of Vanuatu**  
**First Respondent**

**AND:**      **LEINAVAO TASSO of Epi Island in the  
Republic of Vanuatu**  
**Second Respondent**

**Coram:**      **Hon. Vincent Lunabek CJ**

**Counsel:**      *Mr Felix Laumaë for the Claimants  
Mr Frederick Gilu for the First Respondent  
Mr Daniel Yawha for the Second Respondent*

**Date of Hearing:**      *8 – 11 December 2008*

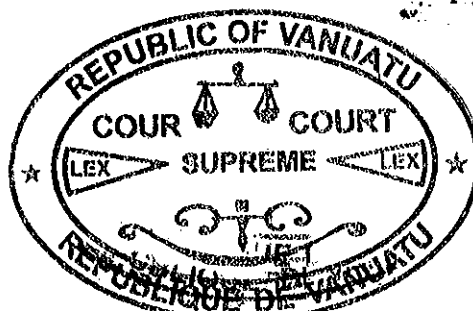
**Date of Judgment:**      *12 December 2008*

## **ORAL JUDGMENT**

### **I. Introduction**

This is an election petition issued in the Supreme Court pursuant to section 54 of the Representation of the People's Act [CAP. 146] ("the Act").

The Petition challenges the validity of the election of the Second Respondent, Mrs. Leinavao Tasso, during the General Elections of 2 September 2008 in the Constituency of Epi Island.



The Petitioners and the Second Respondent were candidates contesting for two (2) Parliamentary seats allocated for Epi Constituency during the 2 September General Elections.

The First Respondent is the Electoral Commission of the Republic of Vanuatu. There is no allegation made against the First Respondent. The First Respondent accepts the jurisdiction of the Court and will be bound by the orders of the Court. On 10 September 2008, the First Respondent in exercise of its powers under the Act, declared the following candidates as having been duly elected in the Constituency of Epi for the two (2) seats:-

<u>Names</u>	<u>Affiliation</u>	<u>Votes</u>
Leinavao Tasso	VP	573
Issac Hamariliu	VNP	514
Isabelle Donald	VP	377
Jack Mowa	NUP	357
Benjamin Konali	Independent	319
Philip Okora	VRP	270
Oraka Keliu	UMP	92
David Richard	Shepherds Alliance	89
Sam Obed	Labour Party	48
David Suma	Green Confederation	43
Iona Simon	Independent	37
Robert Karie	Melanesian Alliance	1

The Second Respondent, Leinavao Tasso, secured the first seat with a total of 573 votes and the other seat was secured by one Issac Hamariliu with a total vote of 514.

The Petitioners were unsuccessful. They challenge the successful election of the Second Respondent on the grounds contained in the Petition.

## II. The Petition

The Petition and the relief sought in the Petition will not adversely affect the successful election of Mr. Issac Hamariliu. As such, Mr Hamariliu is not involved in the proceedings.

The Petitioners, therefore, pray for the following relief:-

1. Pursuant to section 61 (1) (a) of the Representation of the People's Act [CAP. 146], it is declared that the election of the Second Respondent,



Leinavao Tasso, of 2 September 2008 at the Constituency of Epi, is hereby void due to the breaches by the Second Respondent of the provisions of sections 45 and 46 of the Representation of the People's Act [CAP. 146];

2. Order is made directing the Electoral Commission to conduct By-Elections pursuant to section 22 of the Representation of the People's Act [CAP. 146] for the one seat of Parliament of Epi Constituency as a result of the declaration made in order 1 above;
3. Order for costs against the Second Respondent to be paid or agreed.

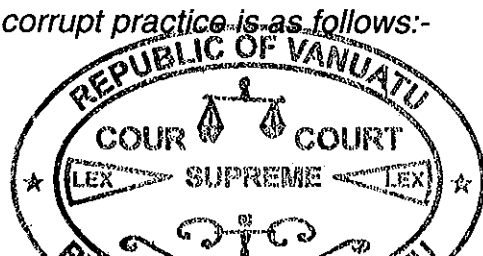
### III. Grounds of the Petition

The grounds of the Petition are contained in paragraph 7 of the Amended Petition filed 24 September 2008. They are as follows:-

*"7. The Petitioners say that the election of the Second Respondent is void due to the breaches by the Second Respondent of sections 45 and 46 of the Representation of the People's Act [CAP. 146].*

#### Particulars

- (i) *Setting up of camp sites by Leinavao Tasso at various villages on Epi during the campaign (15 to 30 August 2008) and on date of election on 2 September 2008 namely:*
  - (a) *Mate/Ngalā villages ;*
  - (b) *Ngeviu village;*
  - (c) *Wenia village ;*
  - (d) *Brisbanē/Nitū place villages ;*
  - (e) *Wambi village ;*
  - (f) *Nul village ;*
  - (g) *Lokopul village;*
- (ii) *The setting up of camps and activities sponsored by the Second Respondent at those villages are so extensively prevailed on Epi that they influence voters to vote for her. This corrupt practice is first to happen on Epi during an election. The corrupt practice is as follows:-*



(a) *Payment of funds to villages to set up camps:-*

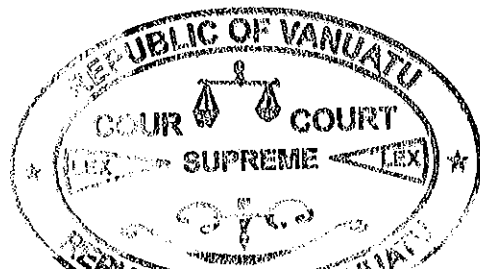
- <i>Mate/Ngala village</i>	<i>VT550,000;</i>
- <i>Ngeviu village</i>	<i>VT200,000;</i>
- <i>Wenia village</i>	<i>VT200,000;</i>
- <i>Brisbane/Niu place villages</i>	<i>VT150,000 ;</i>
- <i>Nul village</i>	<i>VT150,000 ;</i>
- <i>Lokopul village</i>	<i>VT28,000.</i>

(b) *The funds are used to pay for rice, buluk, nani, pig, kava etc, to entice people (voters) living in those villages to vote for the Second Respondent."*

**IV. Response to Petition**

The Second Respondent filed a response to the Petition on 25 September 2008 and say as follows:-

1. That she denies that she had committed any act of bribery and treating for the reason that her election was in accord with the provisions of the Representation of the People's Act [CAP. 146].
2. The Second Respondent says her campaign bases were in some of the villages named by the Petitioners and this was planned for and approved by the Epi constituency of Vanuaaku Party Regional mini congress. It is a normal thing to do in any campaign for the parties to develop strategies to make their campaign leading up to the election. This does not affect eligible voters' right to vote in an election.
3. The Second Respondent says the amount of money was approved by the Epi constituency of Vanuaaku Party Regional mini congress. The money represents an estimated budget for the campaign. The Second Respondent argued that there is no campaign without a budget or money. Political parties and independent candidates must have budget or money for their campaigns and it is a normal thing to do. The allegation does not influence voters to vote for the Second Respondent.
4. The Second Respondent denies the allegations and says the monies budgeted for have been allocated to the chairman of each subcommittee in



the respective places and she has no knowledge how it was spent. A report of those activities may be given in the next mini congress.

5. She further says since 2004 she had helped the people of Epi as an MP and Minister and she believes that the people of Epi trusted and have confidence in her and that is the only reason she got elected in her second term in the national Parliament.

#### **V. Locus Standi**

Section 55 (b) of the Representation of the People's Act [CAP. 146] gives the Petitioners, as former candidates of the elections of 2 September 2008, the right to question the validity of the election of the Second Respondent on 2 September 2008 for the Constituency of Epi. The Petitioners exercise their right by presenting to the Supreme Court this election petition.

#### **VI. The issues**

Below are the issues for determination by the Court:-

1. Whether there was bribery on the part of the Second Respondent during the election period of 2 September 2008:
  - (a) In the setting up of camps sites in the villages?
  - (b) In providing funding for the operations of the camps sites during the election period?
  - (c) In using the fund to pay for food, meat, transport, accommodation of the campaigners during the election period?
2. Whether there was treating on the part of the Second Respondent during the election period of 2 September 2008:
  - (a) When the camps sites provide tea, lunch and dinners to the campaigners during the period of election?
  - (b) When the camps sites provide food to persons other than the Second Respondent's Campaigners?
  - (c) When the camps sites provide entertainment such as showing of videos and using local string band groups during the election period?
3. If bribery and treating on the part of the Second Respondent are supported by material evidence, whether they have been so extensively prevailed that



they may supposed to have affected the result of the election of the Second Respondent on 2 September 2008?

4. If bribery and treating are not proved against the Second Respondent but they are proved against her agents and whether they are so extensively prevailed that they may supposed to have affected the result of the Second Respondent's election of 2 September 2008?

## VII. Election offences

Part XV of the Representation of the People Act [CAP. 146] deals with Election Offences. The relevant provisions of the Act are set out below:

### **"BRIBERY**

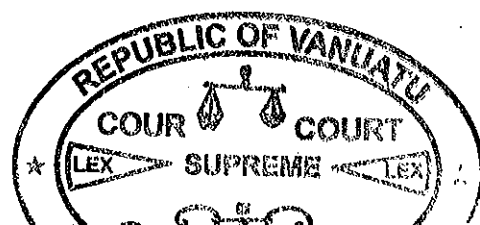
45. (1) A person commits the offence of bribery-

- (a) if he directly or indirectly by himself or by other person-
- (i) gives any money or procures any office to or for any voter or to or for any other person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting;
  - (ii) corruptly does any such act on account of any voter having voted or refrained from voting; or
  - (iii) makes any such gift or procurement to or for any person in order to induce that person to procure, or endeavour to procure, the election of any candidate or the vote of any voter;

or if upon or in consequence of any such gift or procurement he procures or engages, promises or endeavours to procure the election of any candidate or the vote of any voter;

- (b) if he advances or pays any money or causes any money to be paid to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or knowingly pays any money or causes any money to be paid to any person in discharge or repayment of any money wholly or in part expended in bribery at any election;

- (c) if before or during an election he directly or indirectly, by himself or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration or any office, place or employment for



himself or for any other person for voting or agreeing to vote or from retraining or agreeing to refrain from voting;

(d) if after an election he directly or indirectly by himself or by any other person on his behalf receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting.

(2) For the purposes of subsection (1) of this section-

(a) references to giving money include references to giving, lending, agreeing to give or lend, offering, promising and promising to procure or to endeavour to procure any money or valuable consideration; and

(b) references to procuring office include references to giving, procuring, agreeing to give or procure, offering, promising and promising to procure or to endeavour to procure any office, place or employment.

## **TREATING**

46. A person commits the offence of treating-

(a) if he corruptly by himself or by any other person either before, during or after an election directly or indirectly gives or provides or pays wholly or in part the expenses of giving or providing any food, drink or entertainment to or for any person-

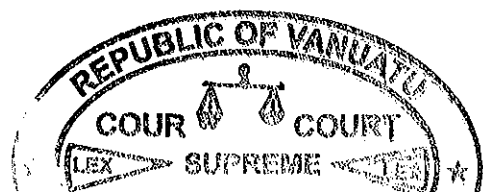
(i) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting; or

(ii) on account of that person or any other person having voted or refrained from voting or being about to vote or refrain from voting;

(b) if he corruptly accepts or takes food, drink or entertainment offered in the circumstances and for the purpose mentioned in paragraph (a) of this section."

## **VIII. Means Rea**

Under section 45 (1) (a), (i) and (iii) of the Act the word "corruptly" has not been used for any of the specified acts done thereunder to constitute bribery, whereas any such act done under sub-paragraph (ii) of the paragraph (a) of the subsection (1) of section 45 of the same Act is required to have been done "corruptly" to

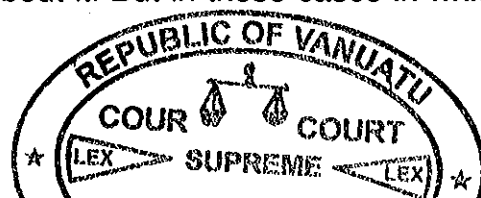


constitute bribery. Equally any such act done under section 46 of the Act is required to have been done "*corruptly*" to constitute treating.

The reason being that, in the former case, that is, the situation raised under section 45 (1) (a) (i) and (iii), the very proof of the act itself allows the Court to draw a prima facie inference that it was done with a corrupt intention.

In the case of ***Peter Salemalu v. Paul Ren Tari and the Electoral Commission***, Election Petition No. 30 of 1998, the Court refers to the case of ***Borough Limerick (1869) O'Malley & Hard Castle 260***, where Mr. Baron Fitzgerald dealt with a similar statutory provision. I will adapt it in the present case (with necessary amendments) in the following way:-

*"I am satisfied that where in the formal part of (section 45 of the Representation of the People's Act [CAP. 146] reference is made to (payment of money), (making gifts) offers and promises made before the vote is given, the Parliament clearly intended the Court to draw a prima facie reasonable inference from the act done as to the purpose for which it was done, leaving to the other side to rebut that inference if they could. Every forbidden act is done for any of the purposes mentioned in this Act [CAP. 146] is to be regarded as done for corrupt purpose, and once shown that a forbidden act is done for any of the purposes mentioned in the Act, it immediately becomes a corrupt act, though it would otherwise have been a purely innocent one; that is to say, in some cases the act itself afford ground for reasonable inference of the intention with which the act is done, and there the legislature has not introduced the word "*corruptly*"; and if the act is simply proved to be done, the Court is allowed to draw from it the ordinary reasonable inference prima facie that it was done for a corrupt purpose. But there are other cases in which the legislature from some reason or other (like the situation under section 45 (1) (a) (ii) and section 46 of the Act) appear to have thought the inference not so strong and in these cases it introduces the word "*corruptly*" for the purpose of showing that it did not intend the ordinary inference or intention to be relied upon ... so here, where the legislature has not introduced the word "*corruptly*", and the actual and reasonable inference from the act that it was an act done for the purpose contemplated, the legislature has treated it as corrupt without mentioning any thing more about it. But in those cases in which it*





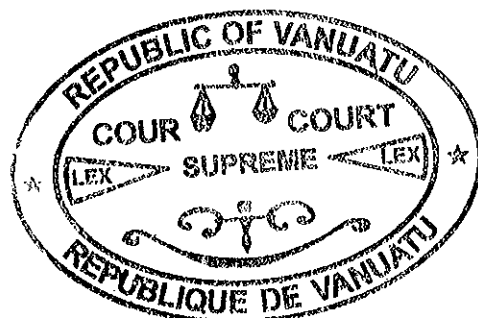
seems to have been intended that the Court should not infer the purpose simply and solely from the act, it has introduced the word "*corruptly*". The whole proof of corruption (and/or corrupt practices), as it appears to me, consist in showing that the forbidden act is done for a purpose not innocent according to the Act of Parliament."

Now applied to the present case; if it were to be proved that the Second Respondent, Leinavao Tasso and her agents set up the camps sites, provide funding for the operations of the camps sites such as payment of expenses for food, meat, entertainment (video, string band etc...), transportation and accommodation of the campaigners and if it were to prove that the Second Respondent, Leinavao Tasso and her agents set up camps sites to provide food, meat, tea, lunch and dinners for two(2) weeks during the election period in order to induce the voters to procure her election as a candidate or the vote of a voter, the Court would be entitled to draw a prima facie inference that the Second Respondent and/or agents of the Second Respondent did so with a corrupt intention even though the word "*corruptly*" has not been used in section 45 (1) (a) (i); (iii) and Mrs. Leinavao Tasso must rebut that inference. If she failed to rebut that inference, the Petitioners would be entitled to succeed.

The word "*corruptly*" is not defined in the Representation of the People's Act [CAP. 146], assistance can be taken from the **Halsbury Laws of England**, Third Edition, paragraph 372 under footnote (1) which reads:

*"Corruptly imports intention... 'Corruptly' does not mean wickedly or immorally, or dishonestly or anything of that sort but doing something knowing that it is wrong and doing it with the object and intention of doing that thing which the statute intended to forbid...the word 'corruptly' governs the whole, and that means, with the object and intention of doing that thing which the statute intended to forbid.*

*It does not mean corrupt in the sense that you may look upon a man as knave or villain, but that it is to be shown that he was meaning to do that thing which the statute forbids..."*



The important question is to consider the state of mind of the Second Respondent. Did she and her agents set the camps sites, provide food, meat, entertainment at the camp sites for 2 weeks for the purpose of corruptly influencing people to vote for her; or was her intention merely to ran an operational and effective campaign leading up to her election.

If the former intention is proved then the Second Respondent will be guilty of bribery and treating and thus, her election will be avoided. If not proved, then the Second Respondent will be declared to have been duly elected and the Petition be therefore dismissed.

### **BURDEN AND STANDARD OF PROOF**

The onus is upon the Petitioner to prove his case according to the civil standard of proof, that is, proof on the balance of probabilities.

### **EVIDENCE AND FINDINGS**

The evidence in the proceeding are in the forms of sworn statements and oral testimonies.

The following witnesses file sworn statements in support of the Petition:

Mel Obed, Kila Oli, Enal Jack, Nakeliu Stephen, Ioane Simon, David Issaac, Alick Melio, Mael Omawa, Okara Keliu, Jimmy Kenneth, Watek Famon, Apia Mawa, Suma David, Harry Tom, Benjamin Korah and Isabelle Donald.

The Second Respondent, Leinavao Tasso, and Eric Moses file each a sworn statement in support of the Second Respondent's Response to the Petition. Witness Joel Joseph gave oral evidence on behalf of the Second Respondent.

On considerations of the sworn statements filed on behalf of the Petitioners and those filed on behalf of the Second Respondent, the Court found from the outset that there is no factual challenge that during the election period which is between 13 August 2008- 2 September 2008, the Second Respondent and her agents set up camp sites in the villages. In the camp sites, monies were given to the chairmen of each camp to pay for the tea, food and meat for the Second



Respondent's campaigners and supporters. Supporters and others who attended the Second Respondent's campaigns were given tea, food and meat at lunch and in the evening. They were also entertained with loud music and video shows. Although, the Second Respondent says that she was not aware of what happened in her political camps, Eric Moses who is the Second Respondent's joint subcommittees chairman on Epi Island conceded on these facts. Mr Eric Moses attempted to provide an explanation by saying that the actions complained of and entertainments do not deprive voters to vote for the candidate of their choice.

The following witnesses of the Petitioners file sworn statements and they are called to confirm the contents of their respective statements. However, the Second Respondent offers no cross examination or no challenge on their evidence which was accepted by the Court:

David Isaac, Maelli Omawa, Oraka Keliu, Jimm Kenneth, Suma David and Ben James Korah. Their evidence is unchallenged and the Court accept them as proven facts of:-

- Money used to purchase food – pig. Lots of food in the camps not just for campaigners during all period of elections ( 13 August 2008-2 September 2008) but also for others.
- Brisbane (Epi village) camp site – tea, rice, food and meat provided for everyday. Camp site fed lots of people from Foreland to Brisbane. Any man can eat everyday. More than VT140,000 expenses (Jimmy Kenneth).
- It was hard to compete with such strategy.
- Campaigners were not in all the camps sites campaigning everyday.

Evidence of Noel Obed, Enale Jack, Apia Mowa, Marry Tom, Isabelle Donald and loane Simon are consistent through out and confirm the evidence of the abovementioned witnesses, in that:

- Ngeviu, Wenia, Brisbane operate morning lunch and dinner during campaigns period.
- Animal killing twice a week
- Operate like celebrations
- Entertainments with loud music stereo, video shows



- Provide food for supporters and non-supporters are not allowed and were sent out.
- 13 August 2008 and 2 September 2008 camps set up and operated from 15 – 30 August and 2 September 2008 at following villages:
  - (a) Mate/Ngala village;
  - (b) Ngeviu;
  - (c) Wenia;
  - (d) Brisbane/Niu place
  - (e) Wambi
  - (f) Nul
  - (g) Lokopul

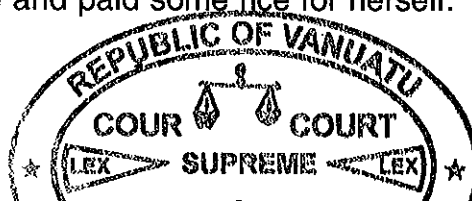
It is an accepted finding that there is evidence of treating in the camp sites intended to secure general popularity, and so to influence voters which amount to corrupt practices.

Evidence show food, meat and tea provided to supporters of the Second Respondent and this with the object and intention to confirm their votes and keeping up the Second Respondent's support of those believed to be already supporting her. That is corrupt treating. It is reasonable to draw that inference.

There is evidence of excessive food (plenty of food) on numerous occasions at different camps sites during the elections period from 13 August to August 2008 and including 2 September. Those circumstances excite suspicion of a corrupt intention which might be inferred. It is reasonable to so infer here.

Most part of the evidence of the Second Respondent admitted the setting up of camp sites, funds provided as per the party regional mini congress on Epi Island. Most part of the statement and evidence of Eric Moses are general denial and argumentative and so they do assist the case of the Second Respondent.

The evidence of Joel Joseph is rejected as he is not a trustworthy witness. I accept the evidence of Mrs. Nakeliu Stephen that he gave her VT2, 000 the day before 2 September 2008 and told her to vote for the Second Respondent and Mrs. Nakeliu got the money and went to vote and paid some rice for herself. This



is contrary to section 45(1)(a) of the Representation of the People's Act [CAP. 146].

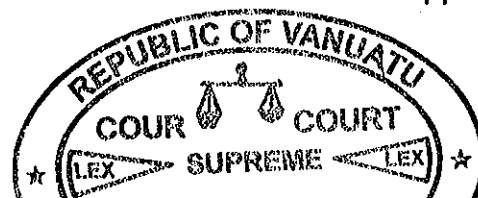
I do not find an act of bribery directly committed by the Second Respondent.

I do not find an act of treating directly committed by the Second Respondent. It is unbelievable that the Second Respondent was not aware of what happened in the camps, although she admitted that the setting of camps sites, the monies to be used, the operational structure of her campaigns were approved in her political party mini congress held on Epi Island. The Court rejected her evidence that she was not aware of these actions. There is overwhelming evidence in this case of corrupt practices in the camp sites from 13 August 2008 to 2 September 2008. The question of corrupt treating must be in each case a question of fact. If the circumstances are calculated to excite suspicion, a corrupt intention might be inferred.

The food, tea, meat and other entertainments provided at camps sites during the relevant period can be calculated to attract suspicion. I find that no reasonable steps have been taken by the Second Respondent for preventing the commission of corrupt practices during the campaigns leading to her election on 2 September 2008.

Although there is no direct evidence of a corrupt intention on the part of the Second Respondent, the circumstances of corrupt practices have so extensively prevailed that they may be reasonably supposed to have affected the result of the election of the Second Respondent.

It is my finding and consideration that setting political camps sites for the purpose of contesting an election is not contrary to law. Equally, there is no law setting a fixed amount of money for political parties or groupings or independent candidates to use during an election. If there are concerns and difficulties as to how to exercise the state control over the expenses of political parties or independent candidates during legislative elections, Parliament must intervene by Parliament's enactment. In the present case, what were wrong in the Second Respondent's camps sites were that the camps sites were used to bribe and treat her supporters



and others with the object and intention to secure their votes in favour of the election of the Second Respondent on 2 September 2008.

In conclusion, I answer the questions posed in the following way:

1. Whether there was bribery on the part of the Second Respondent during the election period of 2 September 2008?

- (a) In the setting up of camps sites in the villages?

I answer no by their setting up. Yes by their operations and use.

- (b) In providing funding for the operations of the camps sites during the election period?

I answer no in principle. But, in the manner the funds were used, I answer yes.

- (c) In using the fund to pay the expenses for food, meat, transport, accommodation of the campaigners during the election period?

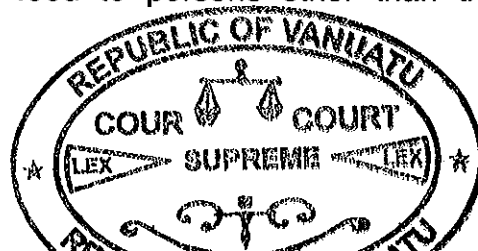
I answer no in principle. But when tea, food and meat were paid and supplied to supporters and others in the camp sites, I answer yes.

2. Whether there was treating on the part of the Second Respondent during the election period of 2 September 2008?

- (d) When the camps sites provide tea, lunch and dinner to the campaigners during the period of elections?

I answer no. But when providing to supporters and others, I answer yes.

- (e) When the camps sites provide food to persons other than the campaigners?



I answer yes, treating committed by the Second Respondent's agents with the Second Respondent's omission or recklessness to prevent these actions occurring as being part of her campaign strategies.

- (f) When the camps sites provide entertainments such as showing of videos and using local string band groups during the elections period?

I answer no in principle. But, if accompanied with tea, food and meat during the election period as in this case, I answer, yes.

3. If bribery and treating on the part of the Second Respondent are supported by material evidence, whether they have been so extensively prevailed that they may supposed to have affected the result of the elections on 2 September 2008?

I answer, yes, by reasonable inference on the facts as found.

4. If bribery and treating is not proved against the Second Respondent but are proved against the agents of the Second Respondent, whether they have been so extensively prevailed that they may supposed to have affected the result of the Second Respondent's election on 2 September 2008?

I answer, yes, by reasonable inference on the facts as found.

On the basis of the above, the Court makes the following Declarations and orders:-

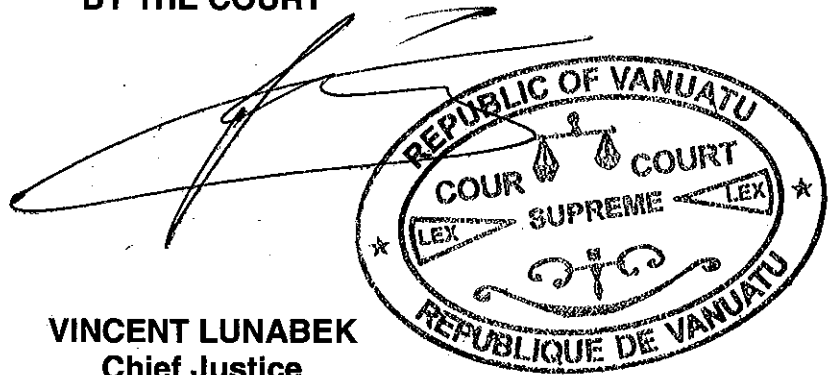
1. Pursuant to section 61 (1) (a) of the Representation of the People's Act [CAP. 146], a declaration is hereby made that the election of the Second Respondent, Leinavao Tasso, of 2 September 2008 at the Constituency of Epi, is void due to the breaches of the provisions of sections 45 and 46 of the Representation of the People's Act [CAP. 146].



2. Order is made directing the First Respondent, Electoral Commission to conduct by elections pursuant to section 22 of the Representation of the People's Act [CAP. 146] for the seat of Parliament of Epi Constituency as a result of the declaration made in order 1 above.
3. Order for costs made in favour of the Petitioners. Costs be taxed or agreed.
4. A certificate shall be issued to inform the Speaker of Parliament.
5. A report shall be provided to the Public Prosecutor pursuant to section 64 of the Representation of the People's Act [CAP. 146].

**DATED at Rovo Bay, Epi this 12<sup>th</sup> day of December, 2008**

**BY THE COURT**



**VINCENT LUNABEK**  
Chief Justice