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IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(Civil Jurisdiction)

CONSTITUTIONAL CASE No.08 OF 2009

**BETWEEN:**     NIPAKE EDWARD NATAPEI  
                                Applicant

**AND:**            MAXIME CARLOT KORMAN  
                                First Respondent

**AND:**            THE REPUBLIC OF VANUATU  
                                Second Respondent

***Coram:***        *Chief Justice Vincent Lunabek*

***Counsel:***     *Mr Edward Nalyal for the Applicant*  
                        *Mr Bill Bani for the First and Second Respondents*  
                        *Mr Ishmael Kalsakau, Attorney General and Mr Frederick Gilu as*  
                        *friend of Court*

*Date of hearing: 4<sup>th</sup> December 2009*

*Date of Judgment: 5<sup>th</sup> December 2009*

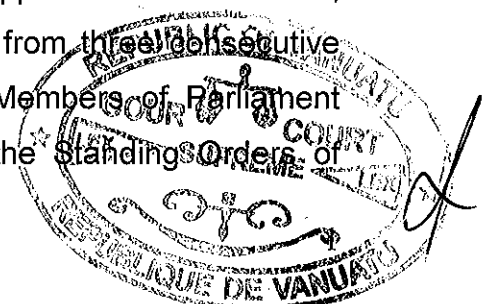
**REASONS FOR JUDGMENT**

**INTRODUCTION**

This is an Urgent Constitutional Application dated and filed 3 December 2009 by the Applicant pursuant to Articles 6; 53(1), (2) and 54 of the Constitution. The Applicant is the Honourable Nipake Edward Natapei, Member of Parliament of Port-Vila Constituency and Prime Minister of the Republic of Vanuatu.

The First Respondent is Honourable Maxime Carlot Korman, Member of Parliament of Port-Vila Constituency and Speaker of Parliament of the Republic of Vanuatu. The Second Respondent is the Republic of Vanuatu.

By announcement dated 27 November 2009, in Parliament, the First Respondent Speaker declared vacant the Parliamentary seat of the Applicant Prime Minister, Nipake Edward Natapei due to the Applicant's absence from three consecutive sittings of Parliament pursuant to Section 2(d) of the Members of Parliament (Vacation of Seats) Act [CAP.174] and Rule 10(2) of the Standing Orders of



Parliament. Interim Orders were issued by the Supreme Court to maintain the status quo between the parties on 27 November 2009 pending the filing and hearing of the substantive Application.

The type of cases like the present are important cases for on-going and continuing education of the society in the nation-building development process. It is so fundamentally important to repeat now and again the role of the Court in cases such as this. I respectfully adopt the approach taken by Megarry VC in **John v. Rees** (1962) 2 All ER 363, when he stated at page 367:

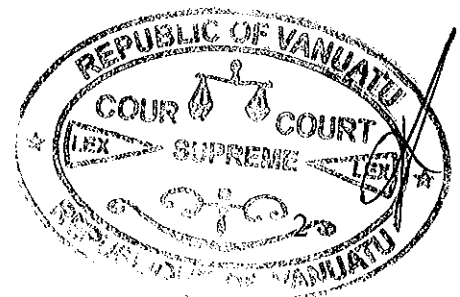
*"I must make explicit what all lawyers will recognise as implicit, but which those who are not lawyers may not fully appreciate. I am not in the least concerned in this case with the rightness or wrongness or the desirability or undesirability of any political or other unit. My concern is merely to see that those concerned in these proceedings obtain justice according to law, irrespective of politics."*

Counsel, parties and the Court consent to the urgency of the matter. Relevant parts of the Constitutional Application Rules 2003 are abridged and/or waived. The Urgent Constitutional Application filed 3 December 2009 is dealt with as a matter of urgency.

## **THE URGENT CONSTITUTIONAL APPLICATION AND ITS GROUNDS**

The Urgent Application is filed with supporting sworn statements from the following deponents:

- Nipake Edward Natapei filed 2 December 2009 and 4 December 2009;
- Moana Carcasses filed 2 December 2009;
- Steven Kalsakau filed 2 December 2009;
- Jerry Esrom filed 2 December 2009;
- Sato Kilman filed 4 December 2009;
- Joe Natuman filed 4 December 2009;
- Sela Molisa filed 4 December 2009.



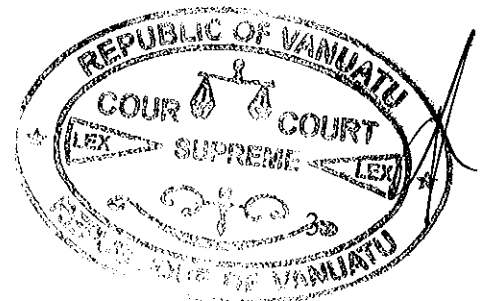
During the hearing, the Urgent Constitutional Application has been slightly amended in respect to the remedies sought.

The Applicant, Nipake Edward Natapei of Port-Vila, applies for:

1. An order that the decision of the Speaker of Parliament on Friday, 27 November 2009 declaring the Parliament seat of the Applicant vacant, is unconstitutional and of no legal effect.
2. A declaration that the decision of the Speaker of Parliament on Friday, 27 November 2009 declaring the Parliament seat of the Applicant vacant is invalid and of no legal effect.
3. An order that the decision of the Speaker of Parliament on Friday 27 November 2009 declaring the Parliament seat of the Applicant seat of the Applicant vacant be quashed entirely.
4. An order that the First Respondent pays the Applicant's costs of this proceeding.
5. Any other orders the Court deems just.

The grounds of the Urgent Constitutional Application are contained in the Application itself. They can be summarised as follows:

First, on 17 November 2009, the Applicant (Prime Minister) reshuffled his Ministerial Cabinet by removing from the coalition government the National United Party (NUP), the Vanuatu Republican Party (VRP) and the Nagriamel Party and brought into the Government, the Alliance political group. It is advanced that the First Respondent was aware that, as the President of V.R.P. at that time, he would be removed as Speaker of Parliament. The First Respondent was present on the evening of 17 November 2009 at the Prime Minister's Office, when the new Ministers of the Government were sworn in.



Second, it is said the First Respondent was present at a ceremony after the swearing in of the new Ministers. At the said ceremony, the Applicant told the First Respondent that the Applicant will be travelling overseas the following week to attend the Commonwealth Heads of Government (CHOGM) Meeting in Trinidad and Tobago and therefore, he will not be attending the Extra-Ordinary Session of Parliament that week.

Third, the First Respondent did not, at that time, object to the Applicant being absent from Parliament the following week.

Fourth, the declaration by the First Respondent on 27 November 2009, declaring the Prime Minister's seat in Parliament vacant is an infringement of the Applicant's fundamental right under Article 5(1)(d) to protection of the law including the natural justice right to be given an opportunity to respond; and the First Respondent failed to provide an opportunity to the Applicant to respond.

Fifth, it is said the First Respondent's declaration was wrong in that he knew at the next Ordinary Sitting of Parliament, he would be removed as Speaker of Parliament.

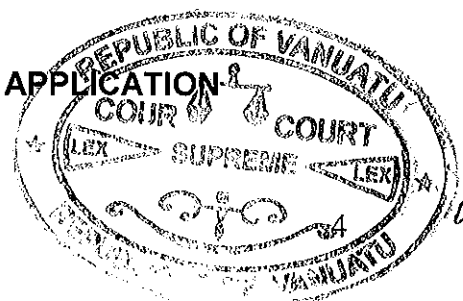
Sixth, the Speaker's declaration infringes the right of the Applicant as an elected Member of Parliament under Article 17(1) of the Constitution.

Seventh, the Speaker's declaration infringes Article 39(1) of the Constitution in relation to the Applicant.

Eighth, the Speaker's declaration infringes the rights of the Applicant as Prime Minister to appoint, Assign and remove Minister's of the Government within Article 41 of the Constitution.

Ninth, the Speaker's declaration is contrary to the provisions of Article 43(2) of the Constitution in relation to the Applicant.

**THE RESPONSE TO THE URGENT CONSTITUTIONAL APPLICATION**



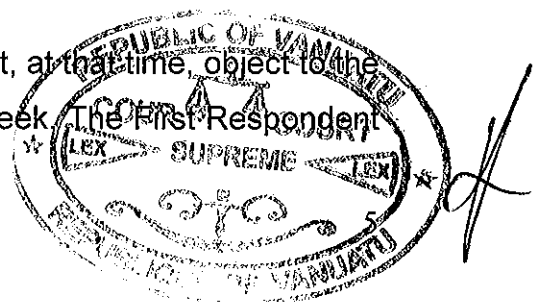
The First Respondent, Honourable Maxime Carlot Korman, Speaker of Parliament filed a response to the Urgent Constitutional Application on 4 December 2009. In his Response, the First Respondent admits the following:

1. The Applicant is the Prime Minister of the Republic of Vanuatu.
2. On Tuesday, 17 November 2009, the Applicant, as Prime Minister, reshuffled his Ministerial Cabinet by removing from the coalition Government that he heads, the National United Party (NUP), the Vanuatu Republican Party (NUP) and the Nagriamel Party. The Prime Minister brought into his coalition Government the Alliance political group, led by Mr Sato Kilman.
3. The First Respondent was informed at the time, he would be removed as Speaker of Parliament.
4. The First Respondent is President of V.R.P.
5. On the evening of 17 November 2009, at the Prime Minister's Office, the new Ministers appointed by the Prime Minister were sworn in. At that swearing in ceremony, the First Respondent was present.

The Response says the Speaker admits that there was a ceremony but does not admit any discussions held therein form part of the practice and procedure of Parliament.

The First Respondent says that he does not know and cannot plead whether or not Mr Moana Carcasses, Minister of Internal Affairs and Mr Paul Teluktuk MP, the Minister of Lands, Mr Steven Kalsakau, the Minister of Agriculture, Forestry and Fisheries and Mr Jerry Esrom heard the Prime Minister telling the Speaker of Parliament that the Prime Minister would be attending the meeting in Trinidad and Tobago and would not be attending the Extra-Ordinary Session of Parliament as pleaded in paragraph 7 of the Application.

The First Respondent says he does not admit he did not, at that time, object to the Applicant being absent from Parliament the following week. The First Respondent



added that this was not the practice and procedure of Parliament whereby request for permission to be absent is sought from Speaker.

The First Respondent denies that his declaration that the Prime Minister's seat in Parliament, is vacant is an infringement of the Applicant's fundamental right under Article 5(1)(d) of the Constitution to protection of the law. This is because the seat is automatically vacant by operation of the law and nothing else (paragraph 9).

The First Respondent does not admit paragraphs 10, 11 and 12 of the Application in that the protection of the law include the natural justice right to be given an opportunity to respond; the First Respondent did not fail to afford an opportunity to the Applicant to respond to the declaration; the First Respondent was not wrong in that he knew at the next Ordinary Sitting of Parliament, he would be removed as Speaker of Parliament. The First Respondent relies on **Carlot v. Attorney General No.2** [1988] VUCA 5 and **Sope v. Attorney General No.4** [1988] VUCA 6. The First Respondent does not admit paragraphs 13 and 14 of the Application in that he denies that his declaration infringes Articles 17(1) and 39(1) of the Constitution in relation to the Applicant. The First Respondent relies on **Boulekone v. Attorney General** [1986] VUCA 11 and **Sope v. Attorney General** [1988] VUCA 6.

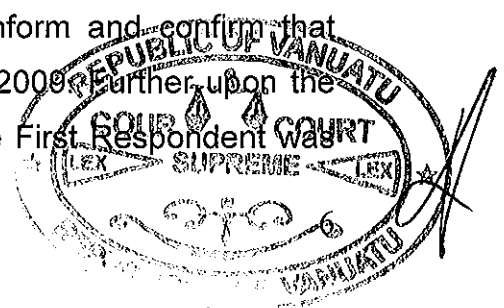
The First Respondent denies paragraphs 15 to 19 of the Application.

The Response to the Urgent Constitutional Application is supported by the sworn statements of the following deponents:

1. 2 sworn statements of Maxime Carlot Korman filed 4 December 2009;
2. 1 sworn statement of Marcellino Pipite filed 4 December 2009;
3. 1 sworn statement Dominique Morin filed 4 December 2009.

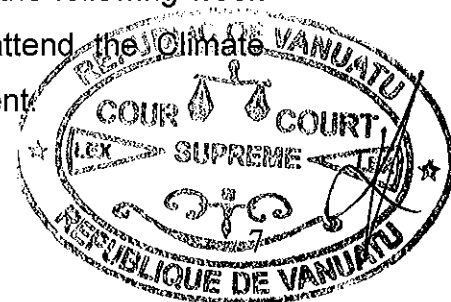
## THE DISCUSSION ON EVIDENCE

The evidence is given by sworn statements. Counsel inform and confirm that position to the Court before the hearing on 4 December 2009. Further upon the Court's enquiry as to whether on 17 November 2009, the First Respondent was

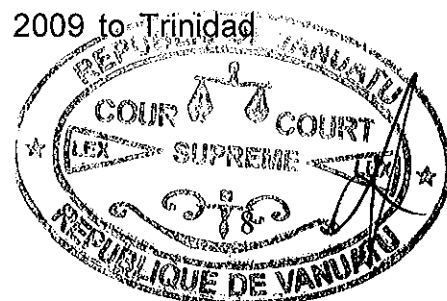


present at the swearing-in ceremonies of the new Ministers of the Government and that conversations took place between the Applicant and the First Respondent to the effect suggested by the Applicant in his sworn statements, Mr Bani, counsel for the First Respondent informed the Court, the First Respondent was present at the said swearing-in and conversations took place between the Applicant and the First Respondent. However, Mr Bani informed the Court that such conversations do not amount to the Parliament practices and procedures. It is therefore the view of the Court that there was no big deal of factual disputes between the parties. From the sworn statements filed in support of the Urgent Constitutional Application and the Response to it, the following common facts emerge:

1. On Tuesday 17 November 2009, the Applicant, Nipake Edward Natapei, as Prime Minister of the Republic of Vanuatu reshuffled his Ministerial Cabinet by removing the members of some political parties and brought into his Government the members of other political groupings.
2. The First Respondent is the President of one of the political parties, namely Vanuatu Republican Party which the Applicant removed from his Government on 17 November 2009.
3. On 17 November 2009, before the swearing in of the new Ministers, the First Respondent Speaker came to the Applicant Prime Minister's Office. A meeting took place between the Applicant and the First Respondent.
4. It is not disputed that conversations took place between the Applicant and the First Respondent to the effect that the First Respondent queried or requested if his VRP supporters could remain in the Government. The Applicant responded he decided to bring in the Government the political grouping of Sato Kilman MP in order to secure the stability in his Government. His intention was to proceed with the Ministerial reshuffle before he left the country on the weekend to attend the Commonwealth Heads of Government Meeting at Trinidad and Tobago the following week and also that he will leave on December 2009 to attend the Climate Change Summit during the Ordinary Session of Parliament.



5. The conversations were to the effect the First Respondent enquired whether he should resign as Speaker of Parliament. The meeting ended with the First Respondent's request to consult with his supporters.
6. On 17 November 2009, in the evening, at the time of swearing in the new Ministers, the First Respondent came back to the Applicant's Office to talk to the Applicant about his consultation with his people as to whether or not he should resign as Speaker of Parliament.
7. After the swearing in of the new Ministers, people had food and drinks including kava at the lawn of the Prime Minister's Office.
8. The Applicant Prime Minister was standing in group talking with the First Respondent Speaker of Parliament and following new Ministers: Moana Carcasses MP and Paul Telukluk MP.
9. The First Respondent talked to the Applicant enquiring:  
*"Honourable Prime Minister, bae you travel soon?"* The Applicant replied to this effect *"Yes Honourable Speaker, bae mi travel aot this Sarere."*
10. There was no further comment nor objection made when the Applicant informed the First Respondent Speaker that he would absent himself from the extra-ordinary session of Parliament the following week.
11. On Thursday 19 November 2009, the Applicant Prime Minister gave an interview on Television Blong Vanuatu (TBV) and stated that he will be out of the country next week on official duty and he would not be present at the extraordinary session of Parliament next week.
12. The Applicant Prime Minister, by letter dated 21 November 2009 appointed the Honourable Sato Kilman MP, as Acting Prime Minister.
13. The Applicant Prime Minister flew out on 21 November 2009 to Trinidad and Tobago to attend the CHOGM Meeting.





14. On 23 November 2009, the Extraordinary Session of Parliament started. The First Respondent Speaker adjourned the first day of the sitting to give time to Members of Parliament to study the four Government Bills.
15. There was no sitting on Wednesday 25 November 2009.
16. On Thursday 26 November 2009, Parliament sat and passed the last Bill. The First Respondent Speaker adjourned Parliament to allow the Council of Ministers to discuss about the Gaua's situation.
17. The First Respondent Speaker received a Notice of Motion of no confidence in the Applicant Prime Minister on 26 November 2009 to be debated on 10 December 2009.
18. On Friday 27 November 2009, the First Respondent Speaker made the following announcement:

***"ANNOUNCEMENT BY SPEAKER OF PARLIAMENT – HON  
MAXIME CARLOT KORMAN***

*WHEREAS I, MAXIME CARLOT KORMAN Speaker of Parliament is entrusted with the Powers and Duties of Speaker as provided Order 10 of the Standing Orders of Parliament;*

*AND WHEREAS by Standing Orders 10(2) it is spelt out that:*

*"The Speaker shall preside over debates in Parliament and ensure that Standing Orders, practices and procedures of Parliament are respected and observed by all Members";*

*AND WHEREAS it is a practice and procedure of Parliament in the Republic of Vanuatu that a Member must obtain permission from the Speaker or in his absence, the Deputy Speaker to be or to remain absent and that if a Member is absent from three consecutive sittings of Parliament without having obtained such permission, that Member of Parliament shall vacate his seat in Parliament.*

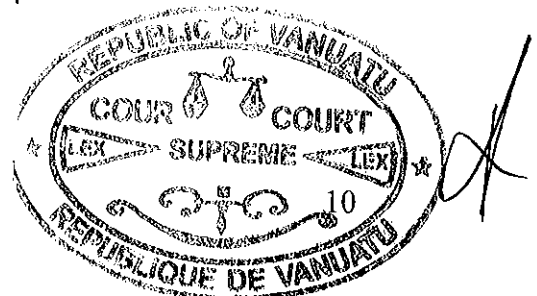
*Now THEREFORE for the reason of having been so absent in three consecutive sittings without having obtained permission from the Speaker, I have the duty to*



*formally announce to Parliament that by operation of Section 2(d) of Members of Parliament (Vacation of Seats) Act [CAP.174] the Seat occupied by Member of Port-Vila , Honourable Edward Nipake Natapei, Prime Minister, has been vacated.*

.....  
*Maxime Carlot Korman  
Speaker of Parliament*

19. The transcript of Parliament proceedings of Tuesday 24 November 2009 shows that, the Honourable Sato Kilman MP, Acting Prime Minister informed the Speaker and the Members of Parliament present *“Mr Speaker as regards to wan obligation ia, I gat leader blong Government business hemi Honourable Thomas Isom, mi no sua se hemi kasem Vila finis or no yet and long Government Whip, mifala i stap wait long Honourable Prime Minister blong hemi kam back long overseas trip bambae mifala i sotemaot who bambae hemi karemaot Government Whip. Thank yu.”*
20. The transcript of Parliament proceedings of Thursday 26 November 2009 shows the passage when the First Respondent Speaker of Parliament stated *“yumi wait taem Prime Minister i kam bambae hemi jes consultem yufala mo bambae official nomination I kam long offis blong Parliament yumi efriwan i agri long ples ia. Thank yu.”*
21. The transcripts of Parliament proceedings of the Extraordinary Session of Parliament of 23-27 November 2009, show the First Respondent Speaker address Honourable Sato Kilman MP *“Acting Prime Minister”*.
22. On 1 December 2009, the First Respondent Speaker declares and rules that the said Notice of Motion was in order for Parliament to debate the Motion on Thursday 10 December 2009 at 16.00 hours.
23. It is a fact that the records of the office of the First Respondent Speaker of Parliament show examples of written requests by Members of Parliament to absent themselves for Parliament sitting. The requests were made to the Speaker.



24. It is also a fact that there was no record of formal replies of the requests of absence by the Speakers of Parliament including the First Respondent Speaker.

## ISSUES

1. Whether the verbal information to the First Respondent Speaker by the Applicant of his absence from the Extraordinary Sessions of Parliament and the Ordinary Sessions of December 2009, amounted to a sufficient notice to the Speaker for the said purpose?
2. Whether the First Respondent Speaker's lack of objection or silence as to the Applicant going overseas amounted to the First Respondent's acceptance and permission despite the First Respondent's announcement of 27 November 2009.
3. Whether Articles 5(1)(d), 17(1) and 39(1) of the Constitution are infringed in relation to the Applicant?

## THE LAW AND ITS APPLICATION

Section 2(d) of the Members of Parliament (Vacation of Seats) Act [CAP.174] is the relevant provision. It provides:

*"2. Vacation of seats of members*

*A member of Parliament shall vacate his seat therein-*

- (d) if he is absent from three consecutive sittings of Parliament without having obtained from the Speaker, or in his absence, the Deputy Speaker the permission to be or to remain absent;"*

The Judgment of the Court of Appeal in **Carlot and others v. Attorney General** No.2 [1988] VUCA 5 sets out the purpose and rationale for Section 2(d) of the Members of Parliament (Vacation of Seats) Act 1983. It was held:

*"The Constitution intends that the Republic shall be governed by Parliament. Parliament can only function if members attend. There is no*



*nothing unconstitutional in a provision designed to ensure that parliament does function, and that a person elected to parliament does what he is elected to do attend Parliament. If he fails to do so, it is reasonable that he should be replaced by somebody who will. There is no procedure laid down in the Constitution for that, so parliament must provide it. It did so in the 1983 Act. The power to unseat in proper circumstances is constitutional. Each individual ground for that may be examined to see whether it is unconstitutional.*

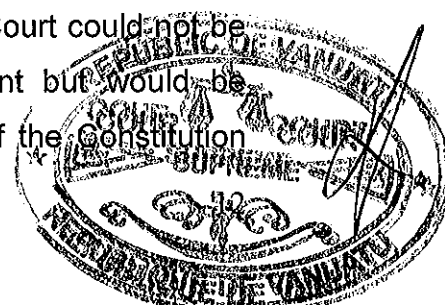
*Section 2(d) is designed to ensure attendance by members. That purpose complies with the Constitution because its object is to make parliament effective. Its terms may appear harsh, but if the principle is valid, it is not the business of the Court to interfere with the detail. In our view Section 2(d)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

*It 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."*

In the case of **Re Boulekone** (1986), the Court was satisfied that Mr Boulekone, then Leader of the Opposition, could not physically and mentally obtain permission from the Speaker for his absence in 3 consecutive sittings of Parliament. It was impossible for him to do so. So despite the declaration of vacancy of his seat, by the then Speaker of Parliament, Mr Boulekone was successful in reclaiming his Parliamentary seat in 1986 before the Courts.

In 1988, the seats of Mr Maxime Carlot Korman and 17 others were declared vacant on the basis that they gave written notice to the then Speaker that they were going to boycott the sittings of Parliament. Their Applications to reclaim for their 18 seats were unsuccessful.

It is important to understand that in entertaining a Constitutional Application and in granting the relief sought in such an Application, the Supreme Court could not be interfering in any matter the exclusive province of Parliament but would be interfering and upholding the Constitution. The interpretation of the Constitution



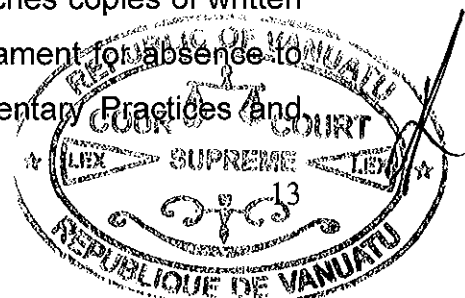
and the granting of relief is self evidently not a function of Parliament but the responsibilities entrusted to the Court by the people of the Republic of Vanuatu through the Constitution. As such, it is not for the Court to interfere in the internal arrangements of the Parliament but members of Parliament can never act so as to deny to other (including the Speaker or other members of Parliament) rights which are provided under the Constitution (Judgment of the Supreme Court, 6<sup>th</sup> April 2001, pp. 5-6 and the **President of the Republic of Vanuatu v. Hon. Maxime Carlot Korman MP & others**, Civil Appeal Case No.08 of 1997).

So where there is no breach of the Constitution the Courts have no power to inquire into the validity of the Legislative Assembly's internal proceedings or the actions of Speaker in these proceedings. But where there is breach of a provision of the Constitution or the infringement of a fundamental right, the Supreme Court has the power to effectively enforce or remedy the breach of the Constitutional provision (Articles 6 and 53 of the Constitution). The Supreme Court is then duty bound to interfere and uphold the Constitution.

In the present case, the First Respondent Speaker was personally informed orally by the Applicant of his absence from the Extraordinary Session of Parliament because of his official overseas trip. The First Respondent himself enquired from the Applicant of the Applicant's absence. The First Respondent acknowledged in Parliament that the Applicant Prime Minister was overseas and so some government business will be sorted out after the return of the Applicant. In Parliament, the First Respondent acknowledged the presence of an Acting Prime Minister.

This amounted to a sufficient notice of the absence of the Applicant to the First Respondent Speaker. The First Respondent was aware of it; that he was informed of it; and that the First Respondent by his conduct accepted the absence of the Applicant from the Extraordinary Session of Parliament and the lack of objection equals permission in the circumstance of this case.

The sworn statements of the First Respondent Speaker attaches copies of written requests by Members of Parliament to the Speaker of Parliament for absence to Parliament sittings. This is what is referred to as Parliamentary Practices and



procedures. It is submitted for the First Respondent, the request must be in writing as part and parcel of the parliament practices and procedures.

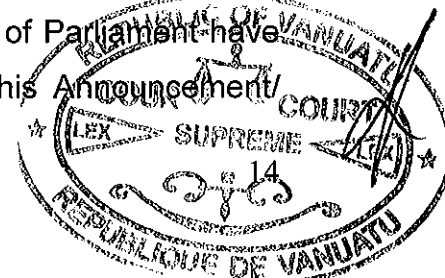
It is to be noted that if the said requests constitute parliamentary practices and procedures for a member of Parliament to absent himself, the said practices and procedures reduce the effect of Section 2(d) of the Members of Parliament (Vacation of Seats) Act of 1983 [CAP.174] into a single written notice whereas Section 2(d) provides for the obtaining of the Speaker's permission to be or to remain absent and in his absence, the Deputy Speaker's. The permission means a request from a member and the response from the Speaker approving or rejecting the request of absence.

The First Respondent confirms his understanding of his permission under Section 2(d) of the Act when he said (sworn statement of 4 December 2009 at paragraphs 7, 8, 9 and 10):

- “7. *I can say that the practice has been that prior to his absence, a member notifies the Speaker in writing but not by word of mouth.*
8. *That member will send a letter to the Speaker notifying the Speaker in advance of his absence, that's all.*
9. *In my experience during my first tenure as Speaker, receipt of that letter from a member suffices. That is, I will not need to actually reply to the member saying, “yes you can be excused”.*
10. *The fact alone that the letter is received prior to the sittings concerned, suffices.”*

Apart from the form of request or information being “written” or “verbal” it is difficult to understand and appreciate the substantial difference between this course of event suggested by the First Respondent in his sworn statement of 4 December 2009 at paragraphs 7, 8, 9 and 10 referred to above and the position of the Applicant in the present case.

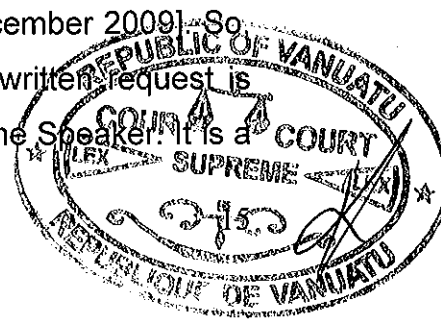
In the present case, Section 2(d) of the Members of Parliament (Vacation of Seats) Act [CAP.174] and Rule 10(2) of the Standing Orders of Parliament have been wrongly applied by the First Respondent Speaker in his Announcement



Declaration of 27 November 2009 in relation to the Applicant; and by doing so, as a consequence, the Declaration of 27 November 2009 wrongly deprived the Applicant of his right to the protection of law guaranteed and protected under Article 5(1)(d) of the Constitution (see **Attorney General v. Timakata** [1993] VUCA 2; the right of the Applicant as an elected member of Parliament under Article 17(1) of the Constitution and the right of the Applicant as an elected Prime Minister.

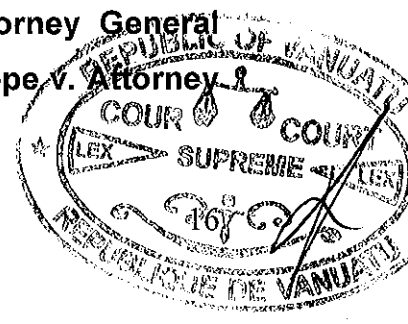
The facts in this case show that the power to unseat the Applicant on examination is unconstitutional for the following reasons:

- When the Speaker was informed or after he enquired himself from the Applicant, the First Respondent was aware and informed of the Applicant's absence. That is the best evidence (better than the writing) as it was contemporaneous. The Speaker is expected to answer by approving or objecting to the Applicant's absence. The First Respondent seems to accept that he does not need to give permission by replying "yes you can be excused".
- If that is the basis of the First Respondent's understanding of Section 2(d) operation, then, that understanding is clearly a misapprehension of Section 2(d) of the Act. Section 2(d) of the Act requires the permission of the Speaker for a member of Parliament to absent himself or herself for three (3) consecutive sittings of Parliament. The permission means a request or information of the absence made to the Speaker and the Speaker's approval of the request. Section 2(d) is silent on the form of the request whether written or verbal. Section 2(d) of the Act does not require a written application. Verbal request for absence is not prohibited by Section 2(d). It is clear from the evidence of the First Respondent Speaker that to his understanding, the request of absence must be a written request. To his understanding, the written request is not made for his permission because as he said he does not need to give one [see paragraphs 7, 8, 9 and 10 of the sworn statements of the First Respondent filed 4 December 2009]. So the First Respondent Speaker's insistence of having a written request is not for his permission but for the records of the office of the Speaker. It is a



good practice to have written requests. However, it is not the only form of request within Section 2(d) of the Act [CAP.174]. Verbal request is also contemplated under Section 2(d) to seek the permission of the Speaker and the written confirmation could be sent after for records purposes. [It is up to the Office of the Speaker of Parliament to put in place good practices and procedures for proper administration of Section 2 (d) of the Act]. The so called “practices and procedures” which reduce the meaning of Section 2(d) of the Act into a simple written form without a reply is meaningless. Further, decisions made on misapprehension of the law (in this case Section 2(d) of the Act), presents the risk of making wrong decisions which wrongly affect the rights of others as a consequence. That is what happened in this case.

- In the present case, after the First Respondent was informed verbally by the Applicant and after the First Respondent himself enquired from the Applicant whether he will be overseas and the Applicant confirmed to him by saying “yes Honourable Speaker bae mi go overseas this sarere”, and by acknowledging in Parliament while Parliament was in Extra-Ordinary Session on 26 November 2009 that, some Government business will be sorted out after the return of the Applicant Prime Minister from his overseas trip, the Speaker is estopped from denying he did not receive any notice from the Applicant’s absence.
- This case presents good facts in support in which the Speaker should object or give notice to the Applicant that he will be making the declaration or announcement to the effect he made on 27 November 2009.
- In the present case, the First Respondent failed to provide an opportunity to the Applicant to respond to the Announcement (or declaration) before he made the announcement. The facts in this case show that it is wrong to refer to Section 2(d) of the Members of Parliament (Vacation of Seats) Act [CAP.174] as having automatic effect by operation of law. The cases referred to by the First Respondent (**Boulekone v. Attorney General** [1986]; **Maxime Carlot v. Attorney-General** [1988] and **Sope v. Attorney General** [1988]) are distinguished from the present case.





In the circumstances of this case, the following constitutional provisions were infringed in relation to the Applicant as the consequence of the First Respondent's Announcement or Declaration of 27 November 2009: Articles 5(1)(d); 17(1); 39(1) of the Constitution. There were no findings made in respect to the claim for breaches of Articles 41 and 42 and 43 of the Constitution.

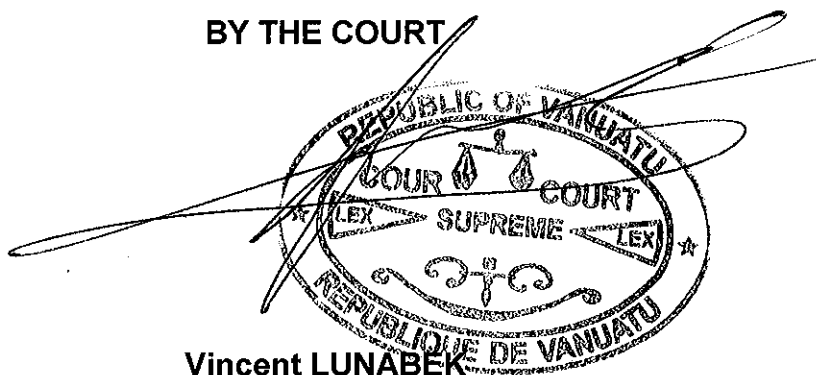
On the bases of the above, the Court makes the following Orders and/or declarations:

### **ORDER**

1. An Order that the decision of the Speaker of Parliament on Friday 27 November 2009 declaring the Parliament seat of the Applicant vacant, is unconstitutional and of no legal effect.
2. There is no order or declaration made in respect to relief sought in 2 and 3 of the Urgent Constitutional Application.
3. The Applicant is entitled to his costs against the First Respondent and such costs are to be agreed or taxed.

**DATED at Port-Vila this 5<sup>th</sup> day of December 2009**

**BY THE COURT**



**Vincent LUNABEK**  
**Chief Justice**