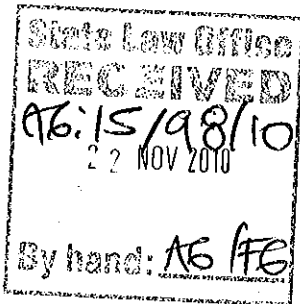


**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
(Civil Jurisdiction)

**CONSTITUTIONAL CASE No.02 OF 2010**

**BETWEEN:** Hon. Maxime Carlot Korman, Leader of Opposition,  
Hon. Ham Lini Vanuaroro Deputy Leader of Opposition  
Hon. Harry Iauko, MP for Tanna Constituency,  
Hon. Willie Reuben Abel Titongoa, MP, Tongoa Constituency,  
Hon. Joshua Kaisakau, MP for Efate Constituency,  
Hon. Yoan Omawa Simon, MP for Epi Constituency,  
Hon. James Bule, MP for Ambae Constituency,  
Hon. Morking Stephens, MP for Tanna Constituency,  
Hon. Esmon Simon, MP for Malekula Constituency,  
Hon. Marcelino Pipite, MP for Santo Constituency,  
Hon. Domonique Morin, MP for Luganville Constituency,  
Hon. Donna Browney, MP for Malekula Constituency,  
Hon. Alfred Carlot, MP for Efate Constituency,  
Hon. Jossie Mamas, MP for Ambrym Constituency,  
Hon. Samson Samsen, MP for Santo Constituency,  
Hon. Havo Molisale, MP for Malo/Aore Constituency,  
Hon. Patrick Crowby Manarewo, MP for Port Vila Constituency  
Hon. Don Ken, MP for Malekula Constituency,  
Hon. David Areiasuv, MP for Tanna Constituency,  
Hon. Louis Etap, MP for Tanna Constituency,  
Hon. Jean Ravu –A Kolomoule, MP for Santo Constituency  
Hon. James Nwango, MP for Ambae Constituency,  
Hon. Eta Rory, MP for Malekula Constituency,  
Hon. Philip Charley, MP for Tafea Outer Island Constituency,  
Hon. Tae Voiasusu, MP for Santo Rural Constituency.



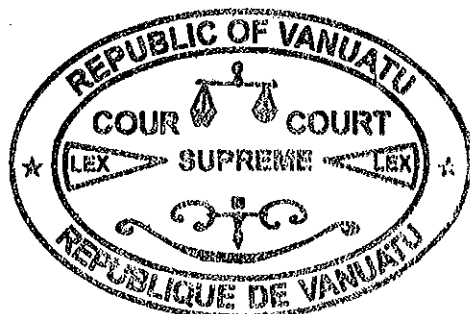
Applicants

**AND:** THE REPUBLIC OF VANUATU

First Respondent

**AND:** Hon. DAVID ABEL, MP for Port Vila Constituency,  
Hon. TOARA DANIEL, MP for Shepherd Outer Islands  
Constituency,

Second Respondents



A handwritten signature in black ink, located to the right of the court seal.

**Coram:** Chief Justice V. Lunabek

**Applicants:** Mr. D. Aru

**1st Respondent:** Mr. F. Gilu

**2nd Respondent:** Mr. E. Nalyal

**Date of Hearing:** 29 October 2010

**Date of Oral Judgment:** 30 October 2010

**Date of publication of Reasons for oral Judgment:** 20 November 2010

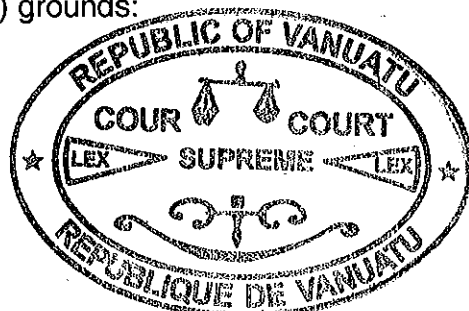
## **REASONS FOR ORAL JUDGMENT**

### **I- INTRODUCTION**

This is a Constitutional Application filed by the Applicants in the Supreme Court on 26 October and amended on 28 October 2010. The Amended Application seeks for the following declarations and orders:

1. A declaration that the Honorable Speaker of Parliament's decision of 18 October 2010 ruling that the Request for an Extraordinary Session of Parliament by twenty seven (27) members of Parliament was not in order was unconstitutional, null and void and of no effect;
2. An order that the Honorable Speaker of Parliament convene an Extraordinary Session of Parliament to consider the matters stated in the request being the Motion of No Confidence against the Prime Minister and the election of a new Prime Minister.

The amended Application is advanced on two (2) grounds:



- 1) The Applicants consider that a provision of the Constitution of the Republic of Vanuatu has been infringed in relation to them.
- 2) The Supreme Court has the jurisdiction to determine the matters and to make such Orders as it considers appropriate to enforce the provisions of the Constitution as provided for by Article 53 (1) (2) of the Constitution.

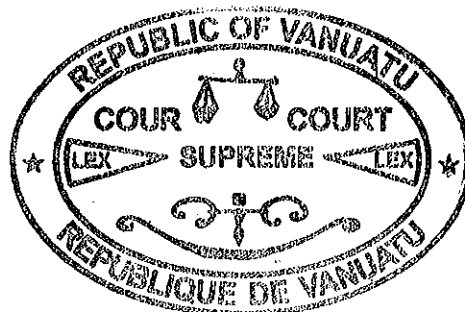
The First Respondent filed a Response to the Application on 27 October 2010 and denied each and every allegations contained in paragraph 1 to 8 of the Amended Application and say that the Amended Application discloses no infringement of the Constitution.

## II - PRELIMINARY MANAGEMENT PROCESS

Before concentrating on this Amended Constitutional Application, following steps need to be mentioned for the purpose of understand the issues and the process followed leading up to the conclusion reached in this case:

### 1. URGENT JUDICIAL REVIEW

- On 21 October 2010, one of the Applicants namely the Hon. Maxime Carlot Korman MP of Port Vila and the Leader of the opposition in Parliament filed an urgent claim for judicial review claiming for the following:
  - 1) A DECLARATION that the ruling made by the Speaker on 18 October 2010 ruling that the request for the Extra-Ordinary Session of Parliament was not in order is invalid and of no effect.
  - 2) A QUASHING order quashing the Speaker's decision of 18 October 2010.
  - 3) A MANDATORY order for the Speaker to convene Parliament on 25 October 2010.
  - 4) COSTS of and incidental to this action.



The urgent Judicial Review was registered as Civil Case No. 166 of 2010 and listed for conference management before the Court on 25 October 2010. At the conference, counsel for the claimant realizes that the subject matter of the claim related to an important constitutional question about the exercise of the right of the majority of the members of Parliament to request an Extraordinary Session of Parliament under Article 22 of the Constitution. The urgent Judicial Review had difficulties in respect to the standing of the Applicant and also although issues raised are important constitution question about the constitutional rights of the majority of the Members of Parliament to call an extraordinary session of Parliament the claim was not filed within the Constitutional Rules and no specific provisions of the constitution which was alleged to have been breached were mentioned.

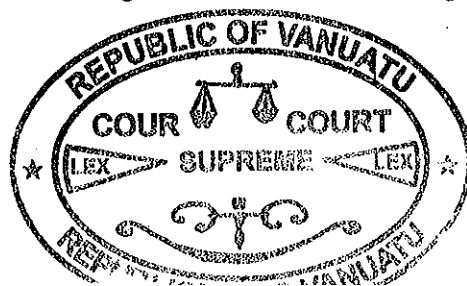
As a result the claimant by counsel withdrew the urgent Judicial Review claim on 26 October 2010 and the Court ordered the claimant to pay the wasted costs of the Respondent.

## 2. CONSTITUTIONAL APPLICATION

On 26 October 2010, the Hon. Maxime Carlot Korman filed a Constitutional Application against the Republic seeking for the following:

- 1) A declaration that the Honorable Speaker of Parliament decision of 18 October 2010 ruling that the request for an Extraordinary Session of Parliament by twenty seven (27) members of Parliament was not in order was unconstitutional, null and void and of no effect;
- 2) An order that the Honorable Speaker of Parliament convene an Extraordinary Session of Parliament to consider the matter stated in the request being the Motion of No Confidence against the Prime Minister and the election of a Prime Minister.

The Constitutional Application also has a difficulty in relation to the standing of the Applicant, Honourable Maxime Carlot Korman alone alleged to have been infringed but



the Application the right of the 27 members of Parliament which constitute the Majority under Article 21(2) of the Constitution to request the speaker to such Parliament in an Extraordinary Session of Parliament.

Again after conference and discussions, the constitutional Application has been amended to include 27 members of Parliament including the Hon. Maxime Carlot Korman as Applicant.

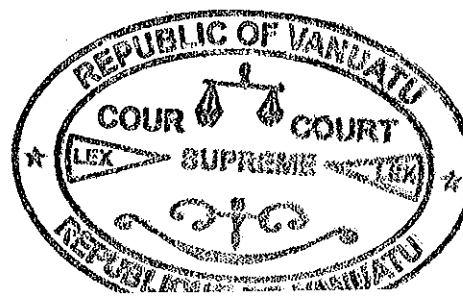
### 3. THE AMENDED CONSTITUTIONAL APPLICATION

On 28 October 2010, the Constitution Application has been amended to include 27 members of Parliament and this includes the Hon. Maxime Carlot Korman as Applicants against the Respondent/Republic of Vanuatu. After further conference with counsel on 28 October on the issues raised in the present constitutional proceeding, counsel for the Application filed a Notice of ceasing to act on behalf of the following two (2) Applications, namely Hon. David Abel, MP for Port Vila Constituency and Hon. Toara David, MP for Shepherds outer Islands Constituency on 29 October 2010. The above two members of Parliament sought legal advice and are legal represented by Mr. Edward Nalyal. The Amended Constitution Application was heard on 29 October 2010. It was supported by a sworn statement of Hon. Maxime Carlot Korman filed 26 October 2010.

### 4. THE RESPONSE

The First Respondent filed a Response on 27 October 2010. The First Respondent denies each and every allegation contained in paragraph 1 and 8 of the Amended constitution disclosed no infringement of the constitution. The First Respondent says that the signatures of Hon. Daniel Toara and Hon. David Abel were withdrawn before the speaker made his ruling on 18 October 2010. The First Respondent says, I will rely on the terms of the request for an Extraordinary Session of Parliament for its full effect.

The First Respondent relies in the sworn statement of the Speaker of Parliament, Hon. George Andre Wells filed 27 October 2010. The Second Respondent files their



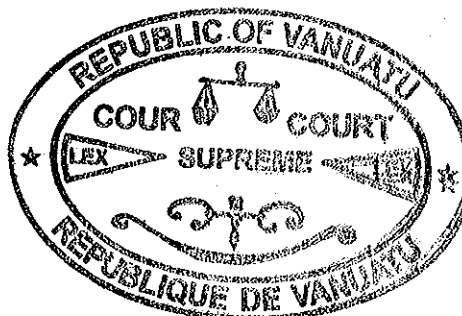
response to the Amended Constitutional Application on 29 October 2010 they say in essence that:

- They did not sign the documents that the Applications say their signature appeared on.
- They signed a separate document called "solidarity agreement" between the Members of Parliament of the Shepherds group.
- They were advised into signing a document they believed is for a different purpose and they say the Applicants used their signatures for another purpose.
- They did not give their consent to the actions taken by the Applicants.

The second Respondents rely on the sworn statements of Hon. Toara Daniel MP for the Shepherds Constituency and Hon. David Abel MP for Port-Vila Constituency, filed on 29 October 2010.

### III - BRIEF BACKGROUND

1. On the 18 October 2010 the Hon. Maxime Carlot Korman lodge on behalf of the Applicants, twenty seven (27) members of Parliament a Request for an Extra-Ordinary Session of Parliament to meet as from the 25 October 2010 and forwarded their request to the Hon. Speaker of Parliament. The request bears 27 signatures.
2. At the same time on the 18 October 2010, fourteen (14) Members of Parliament who are amongst the Applicants signed a Notice of Motion and forwarded the Notice together with a Motion of No Confidence which was also signed by fourteen (14) members of Parliament who are amongst the Applicants to the Hon. Speaker of Parliament.



3. Subsequently on the same date of 18 October 2010, before the Speaker of Parliament made his decision which is the subject of this constitutional challenge, the Hon. Toara Daniel, MP for Shepherds Outer Islands and Hon. David Abel, MP for Port Vila in separate letters wrote to the Hon. Speaker of Parliament indicating the withdrawal of their signatures from the Motion of No Confidence. The letters from Hon. Toara Daniel and Hon. David Abel, both to Hon. Speaker of Parliament dated 18 October 2010 are reproduced below:

"18<sup>th</sup> October 2010,

To Hon. George Andre Wells  
Speaker of Parliament  
P.M.B. 9052  
Parliament House  
Port-Vila.

Dear Hon. Speaker,

**Subject: WITHDRAWAL OF MY SIGNATURE FROM THE MOTION OF NO CONFIDENCE AGAINST THE PRIME MINISTER**

I write to withdraw my signature from the said motion of no confidence against the Prime Minister which heard that they deposited today 18<sup>th</sup> October 2010 at 5 minutes to 2pm today. Please note that we the MPs from SHEFA outer Islands had put our signatures together on a plane paper purposely to work together to draw some big development to Shepard islands.

I understand that our signatures have been misused on the above stated motion, therefore my purpose of writing this letter is to officially withdraw my signature from the said motion.

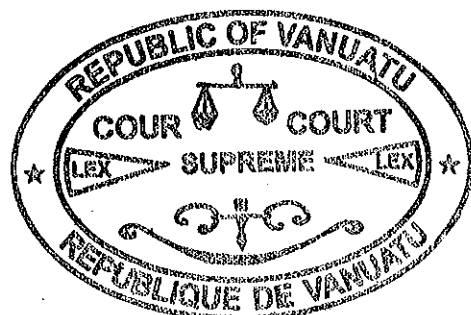
Please accept your Excellency the assurance of my highest consideration.

Thank you.

MP Toara DANIEL  
SHepard Islands Constituency

CC: Prime Minister  
Hon. Moana Carcasses  
Hon. Sato Kilman, Deputy PM  
Hon. Serge Vohor"

"Hon. David Abel  
MP for Port-Vila Constituency



7

Parliament House.

Port-Vila le 18<sup>th</sup> October 2010

Hon. George Andre Wells  
Speaker of Parliament  
PMB  
Port-Vila  
Dear Hon. Speaker,

I would like to advice that I have signed a blank paper that is circulated with the opposition.

After due consideration, I am formally redrawing my signature that I do not want to be used in any Motion was so ever against our current Prime Minister, the Hon. Nipake Edward NATAPEI.

I am reinterring my full support to the ALAENS Group trough our Hon. Sato KILMAN, Deputy Prime Minister and Ho. Moana Kalosil Carcasses, Minister of Internal Affairs.

I wish to advice that I am making this decision with all my Soul and Consciousness.

Yours truly,

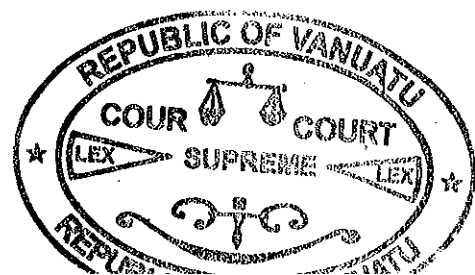
Hon. David ABEL (MP)  
MP for Port-Vila Constituency

CC: Hon. Prime Minister  
Hon. Leader of Opposition  
Hon. Deputy Prime Minister"

4. Following these two letters of withdrawals from the Motion of No Confidence, on the 18 October 2010 the Hon. Speaker of Parliament ruled that the Request for an Ordinary Session of Parliament was not in order as two Members of Parliament out of the twenty seven (27) members of Parliament had withdrawn their signatures from the Request leaving only twenty five (25) members. Below is reproduced the decision of the Hon. Speaker of Parliament dated 18 October 2010:

"République de Vanuatu

Republic of Vanuatu  
Parliament House  
Port Vila, PMB 052  
Telephone (678) 22229  
Telecopie (678) 24530





## *The Speaker*

18<sup>th</sup> October, 2010

To: Hon. Maxime Carlot Korman, Leader of Opposition  
Hon. Ham Lini, Deputy Leader of Opposition

**Subject: NOTICE OF MOTION OF NO CONFIDENCE IN THE PRIME MINISTER**

*Mi raet blong talem tankio long leta we yufala I bin karem ikam tudei long 2pm long ofis blong mi consenem Notis blong Motion mo request blong wan Extra ordineri sison blong parliament. Long request blong extra ordineri seson ia i bin kat 27 memba oli saenem.*

*Be taem we mi stap lukluk long tufala request ia i kat tu long ol 27 memba ia oli kam long withdrawem signatures mo sapot blong tufala. So i mekem se nao ia i kat 25 nomo we signatures blong olgeta i stap long request.*

*So hemia i mekem se required majority we hemi provided under long standing Order 14(1) ino mo met o attained.*

*Therefore mi stap rul se request blong we yufala i bin submitim long ofis blong Spika this afternoon hemi No in order.*

Thank yu

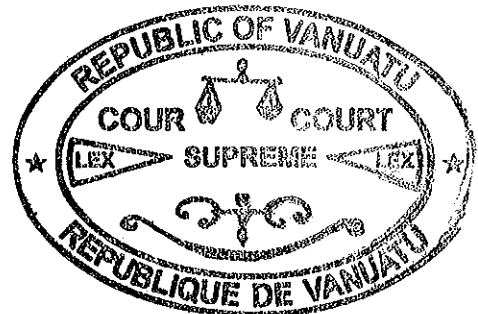
Ho. George Andre Wells  
Speaker"

#### **IV - ISSUE**

Was the decision of the Speaker of Parliament on 18 October 2010 to the effect that the request of an Extraordinary Session of Parliament was not in order, unconstitutional?

#### **V - EVIDENCE**

The essential facts in this case, are as follows:



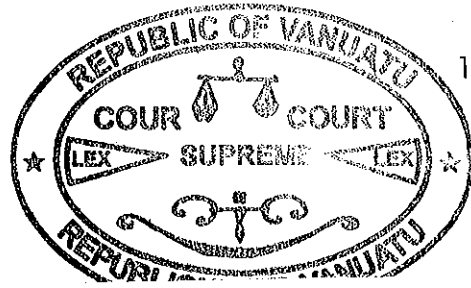
Mr Korman gave evidence that he launched the request as the leader of opposition to the Speaker of Parliament for an Extraordinary Session of Parliament after he saw 27 signatures on the notice and Motion of No Confidence in the Prime Minister. Mr Korman admitted when he was cross-examined that he never had any discussions with Hon. David Abel, MP and Hon. Toara Daniel, MP in relation to the Notice and Motion of No Confidence and the Request to convene Parliament in an Extraordinary Session on 25 October 2010. As to the signatures of 27 Members, Mr Korman said he was not involved himself but other members of Parliament in the opposition group and their technicians collected the signatures of the 27 members. Mr Korman said he did not know how the signatures of MP Toara Daniel and MP David Abel got into the Request document for Parliament to meet in an Extraordinary Session on 25 October 2010 but he saw the signatures of the two Members of Parliament on the Request. He said the opposition Members of Parliament and their technicians did the work.

Mr. Toara gave evidence that he did sign a document called solidarity agreement with other members of Parliament representing the Shepherds group of Islands. It was a blank paper. But he did not sign a Motion of No Confidence. He further said in substance that when he saw that his signature appears on the motion, he wrote to the Speaker on 18 October 2010 to withdraw his signature on the motion. The sworn statement of Hon. David Able was admitted by consent of all counsel. Mr David Abel deposed that he has received a telephone call from Mr. Toara Daniel that his name and signature were included in a Motion of No Confidence against the Prime Minister. He said he wrote a letter to the speaker and withdrew his signature from the said motion. He said he did not remember signing any document that relate to any motion to convene Parliament or any Motion of No Confidence against the Prime Minister.

## VI - FINDINGS

The Court finds the following at paragraph 3, 4, 5, and 6 of the statement of Hon. Maxime Carlot Korman filed 26 October 2010:

*"3. On or around 18 October 2010 twenty seven (27) Members of Parliament including myself as Leader of the Opposition signed a Request for an*

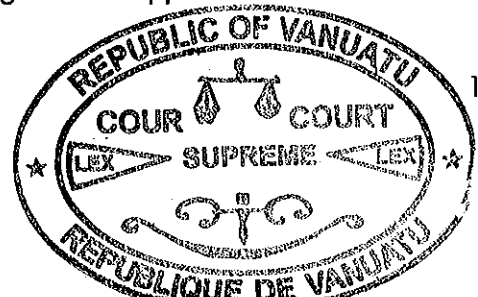


*Extraordinary Session of Parliament to sit as from the 25 October 2010 and forwarded our request to the Hon. Speaker of Parliament.*

- 4. Amongst those who signed the Request were Hon. Toara Daniel Member for Shepherd Islands and Hon. David Able Member for Port Vila.*
- 5. On the same date 18 October 2010 fourteen (14) Members of Parliament including myself signed a Notice of Motion and forwarded the Notice together with a Motion of No Confidence which was also signed by fourteen (14) Members of Parliament including myself to the Hon. Speaker of Parliament. The Hon. Toara Daniel, Member for Shepherd Islands and Hon. David Abel, Member for Port Vila did not sign the Notice of Motion and the Motion of No Confidence.*
- 6. Thereafter on the same date, 18 October 2010 I received copies of two letters from Hon. Toara Daniel Members for Shepherds Islands and Hon. David Abel Member for Port Vila addressed to the Hon Speaker of Parliament withdrawing their signatures to the Motion of No Confidence.”*

It is a fact and accepted by the Court that Hon. Toara Daniel MP and Hon. Abel David MP, did not sign the Notice of Motion and the Motion of No Confidence. This was also confirmed by Hon. Maxime Carlot Korman in his material statement. So as a matter of common sense and understanding, the signatures of Hon. Toara Daniel and Hon. David Abel did not appear on the Notice and Motion of No Confidence in the Prime Minister.

It is also an accepted fact that at the time the request for an Extra-ordinary Session of Parliament was launched before the Speaker of Parliament, and before the Speaker made his decision of 18 October 2010 which is now challenged in the present application, the request for an Extraordinary Session of Parliament on 25 October 2010 bore 27 signatures and the Speaker of Parliament had also before him two separate letters dated 18 October 2010 from Hon. Toara Daniel, MP for Shepherds Constituency and Hon. David Abel, MP for Port-Vila constituency both withdrawing their signatures on the documents it was alleged their names and signatures appeared on them. On the

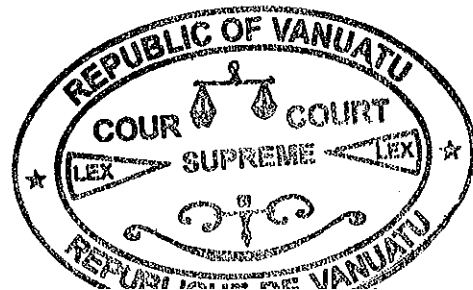


face of the documents, the names and signatures of the two above-named Members of Parliament appeared on the Request for Parliament to meet in an Extraordinary Session on 25 October 2010.

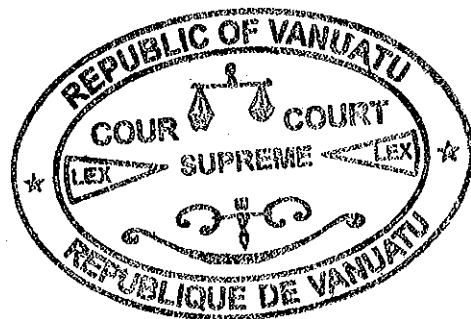
It is further an accepted fact that, both Hon. Toara Daniel and Hon. David Abel, had never signed a Request for the Hon. Speaker of Parliament to convene Parliament in Extraordinary Session on 25 October 2010 as they said in their respective statements.

The following is the relevant part of the statement of Toara Daniel, MP for the Shepherds Islands:

3. *I am a member of the Green Confederation Party aligned with the Alliance Group, a coalition partner of the present government.*
4. *On or about the beginning of September 2010, I executed an agreement with Honourable David Abel, Member of Parliament, Port-Vila constituency and Honourable Willie Reuben Abel Titongoa, Member of Parliament, Tongoa constituency.*
5. *The agreement was a solidarity agreement between the Members of Parliament from the Shepherds group of Islands. The purpose of the agreement was to assist in facilitating a better and close working relationship between the Members of Parliament from the Shepherds group of Islands as well as those of the other central islands of Vanuatu namely Epi, Tongoa and Shepherd Out Islands.*
6. *The solidarity agreement was executed at the residence of Honourable David Abel at Vila North Area. During the signing of the agreement I was at Luganville, Santo so I was not able to sign at that time.*
7. *In any event, while at Luganville, I received a call from Honourable David Abel and Honourable Willie Reuben Able concerning the solidarity agreement.*
8. *I received the telephone call a few days after the signing of the agreement whereby they informed me that a person by the name of Roger Abiut will be sent over to Luganville with the document for me to execute.*
9. *The following day after receiving their call I met with Roger Abiut at Asia Motel in Luganville and signed a document that I believed to be a solidarity agreement.*



10. The document which I signed was in fact a blank paper that was attached to the solidarity agreement, which included the names of the names of all the Members of Parliament from the central islands of Vanuatu.
11. In light of the above, on 14 September 2010 I wrote to the Speaker of Parliament ("Speaker") indicating my withdrawal from the solidarity agreement signed by Members of Parliament from the central islands of Vanuatu. My letter went on to state that I do not intend to support any motion whatsoever. Annexed hereto and marked as TD1" is a true copy of my letter.
12. On 18 October 2010 at about 2pm, I was advised by Noel Mariasua, private secretary to the Leader of Opposition that the Opposition bloc had lodged with the Speaker of Parliament ("Speaker"), a motion of no confidence ("motion") against the Prime Minister.
13. Upon hearing this information, I inquired with Mr Mariasua whether I would be able to view the content of the said motion. He informed me that the motion had already been delivered to the Speaker.
14. That same afternoon, I attended to the Speaker and inquired about the motion. The Speaker handed me several documents and upon perusing the said documents I noticed my signature was in one of the documents.
15. I do not remember signing any document that relate to any motion to convene Parliament or any motion of no confidence against the Prime Minister.
16. I do not remember attending any meeting organized by the Opposition bloc, for the sole purpose of discussing a motion to convene Parliament and a motion of no confidence against the Prime Minister.
17. I confirm that the documents lodged by the Opposition bloc, there is a document bearing my name and signature. I recall signing my name and signature on the said document, but this was during the signing of the solidarity agreement between the Members of Parliament from the Shepherds group of Islands.
18. The only explanation is that my name and signature from that solidarity agreement was used by the Opposition bloc to compile a motion to convene Parliament and a motion of no confidence against the Prime Minister. This was done without my knowledge or consent.



19. *I also note that the motion also include the name and signature of my colleague, Honourable David Abel MP. When I noticed his signature I immediately informed him about it.*
20. *I then wrote to Speaker advising him that I withdraw my signature from the said motion. Annexed hereto and marked as "TD1" is a true copy of my letter dated 18 October 2010.*

**AFFIRMED** by TOARA DANIEL

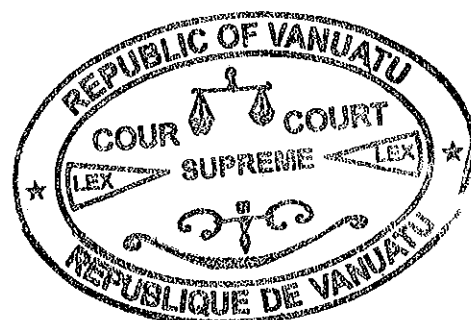
At Port Vila

On this 27 day of October 2010

\_\_\_\_\_  
Deponent"

What follows is the relevant part of the statement of David Abel, MP for the Port-Vila:

3. *I am a member of the Shepherds Alliance Party aligned with the Alliance Group, a coalition partner of the present government.*
4. *On or about the beginning of September 2010, I executed an agreement with Honourable David Abel, Member of Parliament, Port-Vila constituency and Honourable Willie Reuben Abel Titongoa, Member of Parliament, Tongoa constituency.*
5. *The agreement was a solidarity agreement between the Members of Parliament from the Shepherds group of Islands. The purpose of the agreement was to assist in facilitating a better and close working relationship between the Members of Parliament from the Shepherds group of Islands.*
6. *The solidarity agreement was executed at the residence of Honourable David Abel at Vila North Area.*
7. *On 18 October 2010 at about 2.30pm, I received a telephone call from my colleague Honourable Toara Daniel, Member of Parliament for Shepherds Outer Island Constituency. He informed me that he had just attended to the Speaker of Parliament and discovered that our names and signatures were included in a motion of no confidence against the Prime Minister.*



8. *That same afternoon I wrote to the Speaker advising him that I withdraw my signature from the said motion. Annexed hereto and marked as "DA1" is a true copy of my letter dated 18 October 2010.*
9. *Further, I do not remember signing any documents that relate to any motion to convene Parliament or any motion of no confidence against the Prime Minister.*
10. *I do not remember attending any meeting organized by the Opposition bloc, for the sole purpose of discussing a motion to convene Parliament and a motion of no confidence against the Prime Minister.*
11. *I confirm that in the documents lodged by the Opposition bloc, there is a document bearing my name and signature. I recall signing my name and signature on the said document, but this was during the signing of the solidarity agreement between the Members of Parliament from the Shepherds group of Islands.*
12. *The only explanation is my name and signature from that solidarity agreement was used by the Opposition bloc to compile a motion to convene Parliament and a motion of no confidence against the Prime Minister. This was done without my knowledge or consent.*

**AFFIRMED** by DAVID ABEL

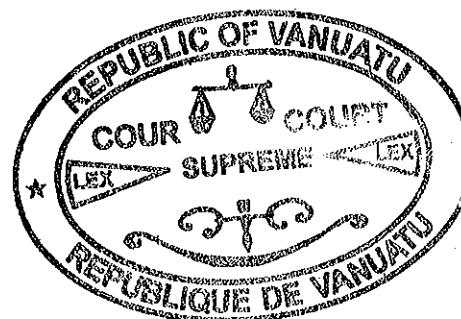
At Port Vila

On this 27 day of October 2010

\_\_\_\_\_  
Deponent"

From the facts, since Hon. David Abel and Hon. Toara Daniel never signed the Notice and Motion of no confidence in the Prime Minister as confirmed by Mr Korman in his statement, it is impossible for each and both of them to withdraw a signature on the Notice and Motion of no confidence that they never entered on such documents.

On 18 October 2010, a request for Parliament to convene in an Extraordinary Session was launched before the Speaker of Parliament bearing 27 signatures including the names and signatures of Hon. Toara Daniel MP for Shepherds Islands and Hon. David Abel MP for Port-Via.



The Court accepted the version of the facts that the only explanation was that the names and signatures from the solidarity agreement were used to compile a Request for the Speaker to convene Parliament in an Extraordinary Session on 25 October 2010. This was done without the knowledge or consent of the two members of Parliament.

On 18 October 2010, before the Speaker made his decision, he had received two separate letters from Hon Toara Daniel and Hon. David Abel that they each withdrew their signatures on the motion.

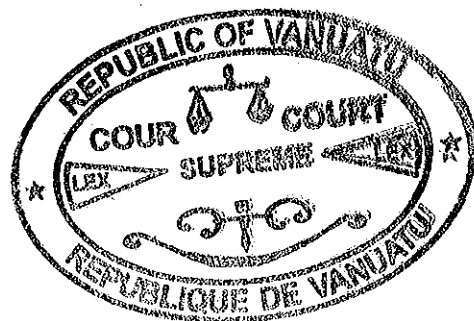
It is accepted that the only rational and sensible factual justification is that because MP Toara Daniel and MP David Abel had never signed a Notice and Motion of no confidence, the only signature that each and both of them could possibly and rationally withdraw must be their signatures appearing on the Request to convene Parliament. This means that, although they said in their letters to the Speaker dated 18 October 2010 that they withdrew their signatures on the Motion of No Confidence, they intended to withdraw their signatures appearing on the Request to convene Parliament on 25 October 2010.

## VII - LAW AND ITS APPLICATION

The law is as stated in **Lini v. Speaker of Parliament** [2004] VUSC 42; CC 154 of 2004 (19 August 2004); **Attorney General v. Willy Jimmy and others** [1996] VUCA 1, Case No. 07 of 1996.

The factual circumstances of the cases referred to above are different from the present case. The law applied in these cases is the same law to be applied in this case. However, when applied in this case, it will have no relevance because the factual circumstances are distinguishable from the facts in this case. As such, cases of **Lini v. Speaker of Parliament** and **Attorney General v. Willy Jimmy and others** referred to above are distinguishable from the present case.

## XIII - CONCLUSION





The Court has reached the conclusion that the Speaker was right in his decision of 18 October 2010 in that the requirement of Article 21(2) of the Constitution are not met.

In the present case, there is no infringement of a constitutional provision in relation to the Applicants. The Amended Constitutional Application must fail.

The Court makes the following orders and observations (Dictum):

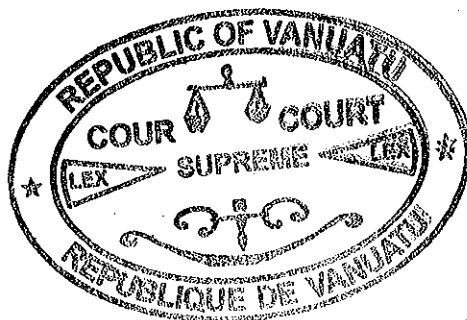
### ORDERS

- 1) The Amended Constitutional Application filed on 28 October 2010 is dismissed.
- 2) There is no infringement of a Constitutional provision in relation to the Applicants.
- 3) The First and Second Respondents are entitled to their costs to be agreed or determined.

### DICTUM

Since the independence of Vanuatu in 1980, Vanuatu becomes a sovereign Republic with a written Constitution as its supreme law. Vanuatu continues to grow its constitutional and democratic foundations and developments. The judicial pronouncements contribute to this process of constitutional growth under the supremacy of the rule of law. It must be encouraged and one of the duties of all citizens and leaders of the Republic is to work and enhance the nation's constitutional growth within the spirit of the Constitution [PART II – FUNDAMENTAL DUTIES (Articles 7-8)].

This constitutional case raises an important question of the process of Parliament in respect to Standard Procedures and Practices to apply Articles 21(2) of the Constitution in the interface between the rights of the Majority and the Minority of Members of

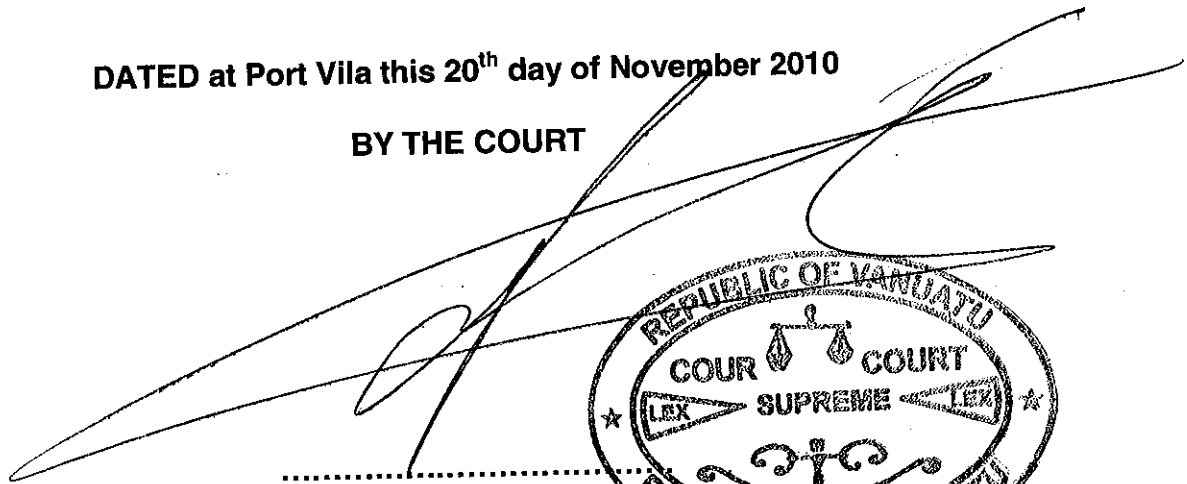


Parliament in Parliament within the constitutional principle of a responsible government before the Legislature (Articles 39 and 43 of the Constitution).

The present case smells out fraudulent or other serious dishonest criminal practices offences within the criminal laws of Vanuatu by individuals or outside bodies in the absence of clear standard procedures and practices to invoke Articles 21(2) of the Constitution. It is hoped that Parliament and those who are entrusted to assist Parliament put in place relevant, clear and simple Parliamentary Standard Procedures and Practices to minimize human discretions and criminal practices in the type of the process to be adopted in this kind of continuous and ongoing constitutional democratic development of the Republic.

**DATED at Port Vila this 20<sup>th</sup> day of November 2010**

**BY THE COURT**



Vincent LUNABEK  
Chief Justice

