

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

**Constitutional Case No.07 of 2011**

**BETWEEN:** Hon. Meltek Sato Kilman Livtunvanu,  
Prime Minister  
Hon. Ham Lini Vanuaroroa, MP  
Hon. Moana Kalosil Carcasses, MP  
Hon. George Andre Wells. MP  
Hon. Alfred Carlot, MP  
Hon. Marcellino Pipite, MP  
Hon. Iauko Harry Iaris, MP  
Hon. Morken Steven Iatika, MP  
Hon. Steven Kalsakau, MP  
Hon. Willie Reuben Abel, MP  
Hon. Ralph Regenvanu, MP  
Hon. Don Ken, MP  
Hon. James Ngwango, MP  
Hon. Willie Lop, MP  
Hon. Toara Daniel Kalo, MP  
Hon. James Bule, MP  
Hon. Rean Ravou KOLOUMULE, MP  
Hon. David Tosul, MP  
Hon. David Tienne Arieasuv, MP  
Hon. Dustan Hilton, MP  
Hon. Phillip Charley, MP  
Hon. Isaac Marmouliu, MP  
Hon. Raphael Worwor, MP  
Hon. Louis Etap, MP  
Hon. Havo Moli, MP  
Hon. Donna Brownie, MP  
Hon. Samsen Samson, MP  
Hon. Esmon Saimon. MP  
Applicants

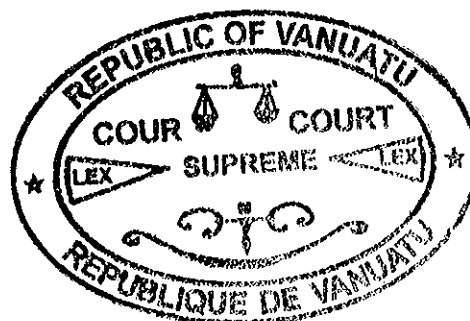
**AND:** HON. MAXIME CARLOT KORMAN,  
Speaker of Parliament  
Respondent

**Coram:** V. Lunabek CJ

**Counsel:** Mr Alatoi Ishmael Kalsakau, Attorney-General for the Applicants  
Mr Willie Daniel for the Respondent

Date of hearing: 23 August 2011

Date of decision: 23 August 2011



## JUDGMENT

Before me is a Constitutional Application filed on 19 August 2011 which is then amended on 22 August 2011 by Hon. Sato Kilman, Prime Minister and 27 Members of Parliament of the Republic of Vanuatu. The Application (as amended) seeks for Orders:

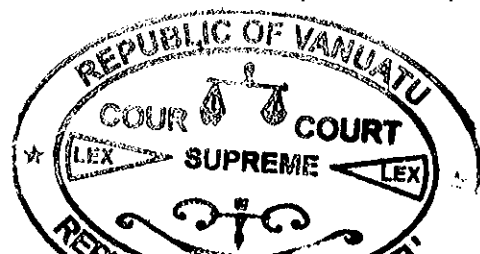
1. That the Sixth Extraordinary Session of Parliament is still seized of its outstanding business.
2. That the ruling of the Respondent Speaker on 19 August 2011 to close the sixth Extraordinary Session of Parliament constitutes an infringement of Article 21 of the Constitution and is void and of no effect.
3. That Parliament meet forthwith to continue and complete its business as itemized in the agenda for the Sixth Extraordinary Session of Parliament.

On 20 August 2011, at 2.00pm and 4.00pm o'clock, the court held a first conference pursuant to the relevant provisions of the Constitutional Application Rules. The Court was satisfied that the Application has to be dealt with urgently based on:

- The importance of the constitutional question raised;
- The involvement of the law-making process of Parliament;
- The nature of the constitutional relief sought; and
- The public interest of the matters raised.

As in such sort of cases, the relevant part of the Constitutional Rules are abridged and the Respondent through counsel was directed to file and serve a response to the application and any sworn statement in support of the response. The Amended Constitutional Application is listed for hearing on Tuesday 23 August 2011 at 10.00am o'clock.

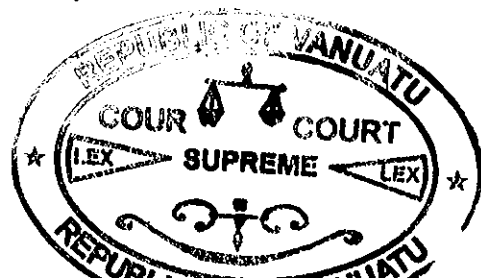
The grounds of the Application are contained in the Amended Application. In essence, it is contended by the Applicants that in the course of closing the Sixth Extraordinary Session of Parliament on 19 August 2011, the Respondent Speaker



infringed Article 21(2) of the Constitution in relation to them. In addition, the Applicants contend that the Respondent Speaker has infringed Article 21(3) of the Constitution on the basis that matters on the agenda for the Sixth Extraordinary Session of Parliament were never disposed of by Parliament.

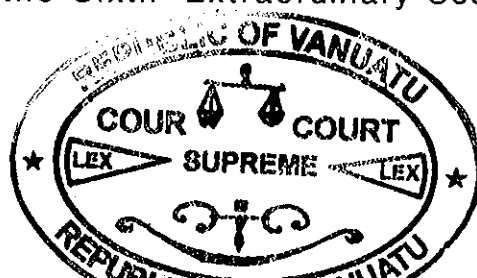
In response to the Amended Constitutional Application, the Respondent says as follows:

1. That the Sixth Extra-ordinary Session of Parliament has been lawfully closed by the Respondent.
  2. That the Ruling of the Respondent on 19 August, 2011 to close the Sixth Extra-ordinary Session of Parliament does not constitute an infringement of Article 21 of the Constitution and is therefore valid and effective.
  3. That Parliament can only meet to discuss and complete the business as itemized in the agenda for the Sixth Extra ordinary Session of Parliament in a new Extra-ordinary Session of Parliament called and -or requested by the Applicants in accordance with the Standing Orders of Parliament.
- 
1. The Respondent Speaker contends that the Respondent agrees that there was a request for calling of Parliament by the Government but that the Bills proposed or itemized in the agenda and a Motion to be debated were not in order ready to be debated in Parliament on the 19th August, 2011 and likewise not in accordance with Standing Orders of Parliament, specifically orders 24,26 and 35.
  2. According to the Government's request, the sitting of Parliament was called within 7 days thereafter which is to be on 19<sup>th</sup> August, 2011.
  3. When Parliament met on Friday 19<sup>th</sup> August, 2011, in effect, the Government had practically nothing to present and or debated in Parliament then as the proposed agendas to be discussed, which is 3 Bills and a motion were not in order pursuant to Standing Orders of Parliament.
  4. Pursuant to Standing Orders 26, any Member of Parliament or



Minister who wishes to introduce a Bill shall supply to the Clerk sufficient printed copies in French and English not less than 15 days prior to the meeting at which the Bill is to be introduced.

5. The Government Bills were not given to the Clerk until Tuesday 16 August 2011 which by Friday 19 August 2011 could not be introduced to Parliament as it would only be 4 days which therefore is contrary to Standing Order 26.
6. Pursuant to the Standing Orders, the Bills can only be introduced to Parliament 15 days after the 16 August 2011 which is 31 August 2011.
7. As for the Motion, the Motion was also not in order as Standing Order 35 stipulates that only a member who wishes to move a written motion shall give notice thereof by delivering a signed copy by him to the clerk and another member acting as seconder of the motion. Further that the motion can only be debated after 3 days.
8. According to Standing Orders, motions are usually debated on Tuesdays and Thursdays and not otherwise.
9. On 12 August 2011, the Government was advised by the clerk of Parliament that a fresh motion to remove the speaker will have to be deposited to the clerk together with the proposed Government Bills.
10. The proposed motion to remove the Respondent was signed and seconded by MP Willie Lop and MP Toara Daniel however on 12<sup>th</sup> August, 2011, Minister Ralph Regenvanu went and deposited a photocopied motion originally lodged by the 2 members mentioned in the fifth Extra-ordinary session of Parliament which directly contravenes Standing Orders 35.
11. The Respondent's office advised the Government of the error and to correct the same but nothing was done to correct the defect.
12. As such since motions are only dealt with on Tuesdays and Thursdays, the same could not be debated on Friday 19<sup>th</sup> August 2011 and likewise is not a live agenda to be discussed then.
13. Furthermore, the Respondent did make it clear to the Government that due to very tight budget constraints faced by the National Parliament currently, the Sixth Extraordinary Session



of Parliament could not be adjourned on Friday 19<sup>th</sup> August, 2011 for a week to Friday 26 August, 2011 as the Parliament will only be spending money on members allowances for nothing, thus to save costs the Session must be closed.

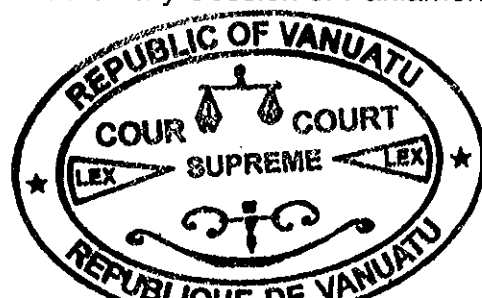
14. Thus it is a matter of planning between the Government and the Parliament to arrange sessions of Parliament to make sure that there is business to discuss and money not to be wasted however the Government has not been in dialogue with the office of the Speaker to discuss this which results in this current situation.
15. Pursuant to Standing Order 45, the opinion or a decision of the Speaker as to any question related to the application or interpretation of the Standing Orders shall not be Challenged except on a written motion made in accordance with Standing Order 35.
16. The Applicants should have not challenged the Respondents decision pursuant to Standing Order 45 but instead lodged this current Application as such.
17. Therefore the Sixth Extra-ordinary Session of Parliament has been lawfully closed and the proposed agendas in the Sixth Extra-ordinary Session can now be only presented and debated in a fresh and new Extra-ordinary Session of Parliament which if called by the Government will be the Seventh Extra-ordinary Session of Parliament.
18. For the foregoing reasons, this Constitutional Application is misconceived and must be dismissed with costs.

The main issue raised in this case can be summarized as follows:

“When the Honourable Maxime Carlot Korman Speaker of Parliament, closed the Sixth Extraordinary Session of Parliament on Friday 19 August 2011, was the closing of Parliament, infringed the constitutional right of the Applicants.”

The Applicants and the Respondent file respective sworn statements. The facts in this case are not in dispute. Both counsel provide a common statement of agreed facts. They are as follows:

1. On or about 12 August 2011, the Applicant Hon. Meltek Sato Kilman Livtunvanu, Prime Minister wrote a letter to the Respondent requesting Parliament to be convened for its Sixth Extraordinary Session of Parliament.



2. That the said letter anticipated that the duration of the Sixth Extraordinary Session of Parliament was to be 21 days or until such time as all items on the agenda were to be disposed of.
3. The duration of the Sixth Extraordinary Session was scheduled for 21 days or until all matters listed on the agenda were disposed of.
4. On or about 12 August 2011, the Respondent summoned Parliament to meet in its Sixth Extraordinary Session to commence on 19 August 2011.
5. On or about 12 August 2011, the Clerk of Parliament issued notices to all Members of Parliament, including the Applicant, for the Sixth Extraordinary Session of Parliament and enclosed the agenda of the said session.
6. On Friday 19 August 2011, the Respondent, being satisfied that Parliament was quorate, proceeded to open Parliament for its Sixth Extraordinary Session.
7. The Respondent closed the Sixth Extraordinary Session of Parliament without Parliament debating or voting upon any items on the agenda.

The Clerk of Parliament files a statement and attaches with it the Minutes of Parliament proceedings of 19 August 2011.

## **THE LAW AND ITS APPLICATION**

The relevant provisions of the law are set out below:

Article 2 provides:-

**"2. CONSTITUTION SUPREME LAW**

*The Constitution is the supreme law of the Republic of Vanuatu."*

...

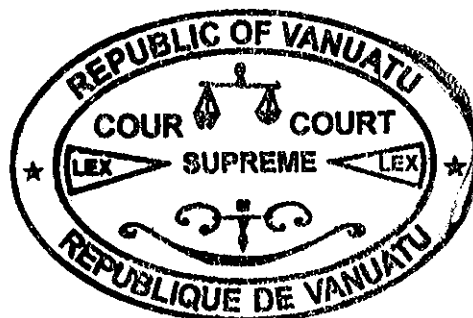
Article 15 provides:-

**"15. PARLIAMENT**

*The legislature shall consist of a single chamber which shall be known as Parliament."*

Article 16 provides:-

**"16. POWERS TO MAKE LAWS**



- (1) *Parliament may make laws for the peace, order and good government of Vanuatu.*
  - (2) *Parliament shall make laws by passing bills introduced either by one or more members or by the Prime Minister or a Minister.*
- ....”

Article 21 provides:-

**“21. PROCEDURE OF PARLIAMENT**

- (1) *Parliament shall meet twice a year in ordinary session.*
- (2) *Parliament may meet in extraordinary session at the request of the majority of its members, the Speaker or the Prime Minister.*
- (3) *Unless otherwise provided in the Constitution, Parliament shall make its decisions by public vote by a simple majority of the members voting.*
- (4) *Unless otherwise provided in the Constitution, the quorum shall be two-thirds of the members of Parliament. If there is no such quorum at the first sitting in any session Parliament shall meet 3 days later, and a simple majority of members shall then constitute a quorum.*
- (5) *Parliament shall make its own rules of procedure.”*

**“SPEAKER**

22.(1)...

- (2) *The Speaker shall preside at sittings of Parliament and shall be responsible for maintaining order.*

...”

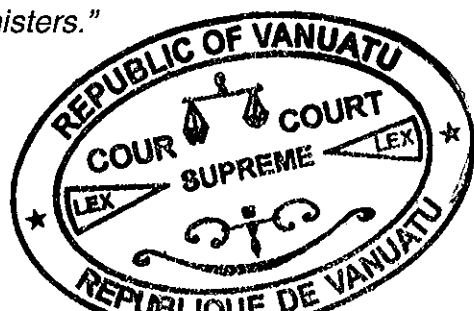
Article 39 provides:-

**“39. EXECUTIVE POWER**

- (1) *The executive power of the people of the Republic of Vanuatu is vested in the Prime Minister and Council of Ministers and shall be exercised as provided by the Constitution or a law.”*

**“40. COUNCIL OF MINISTERS**

- (1) *There shall be a Council of Ministers which shall consist of the Prime Minister and other Ministers.”*



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**"43. COLLECTIVE RESPONSIBILITY OF MINISTERS AND VOTES OF NO CONFIDENCE**

- (1) *The Council of Ministers shall be collectively responsible to Parliament.*
- (2) *Parliament may pass a motion of no confidence in the Prime Minister. At least 1 week's notice of such a motion shall be given to the Speaker and the motion must be signed by one-sixth of the members of Parliament. If it is supported by an absolute majority of the members of Parliament, the Prime Minister and other Ministers shall cease to hold office forthwith but shall continue to exercise their functions until a new Prime Minister is elected."*

**"47. THE JUDICIARY**

- (1) *The administration of justice is vested in the Judiciary, who are subject only to the Constitution and the law. The function of the judiciary is to resolve proceedings according to law."*

Article 49 provides:-

**"49. THE SUPREME COURT**

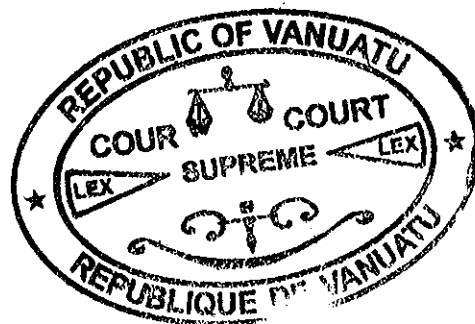
- (1) *The Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings, and such other jurisdiction and powers as may be conferred on it by the Constitution or by law.*

..."

Article 53 provides:-

**"53. APPLICATION TO SUPREME COURT REGARDING INFRINGEMENTS OF CONSTITUTION**

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





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

...”

### **Standing Orders of Parliament**

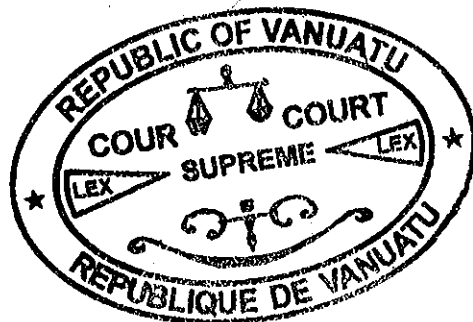
Orders 10; 11; 14; 17(1); 24; 25; 26; 35; 45; 46(1), (2), (3); 50(1)(c); (3), (4), (5), (6), (7), (8) and 51 are the relevant Orders of the Standing Orders of Parliament. They provide as follows:

### **Powers and Duties of Speaker**

- “10. (1) *The Speaker shall preside at sittings of Parliament and shall be responsible for maintaining order. In exercising his duties, the Speaker may request assistance from officers of Parliament or if necessary, members of the Police Force.*
- (2) *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.*
- (3) *The Speaker shall not participate in any debate before Parliament. In the case of equality of votes, the Speaker shall give a casting vote and any reason stated by him shall be entered in the minutes of the sitting.*
- (4) *The Speaker shall read or cause to be read by the Clerk the results of any vote or debate of Parliament.*
- (5) *The Speaker shall represent Parliament and sign any official document originating from Parliament.*

### **Office of Clerk**

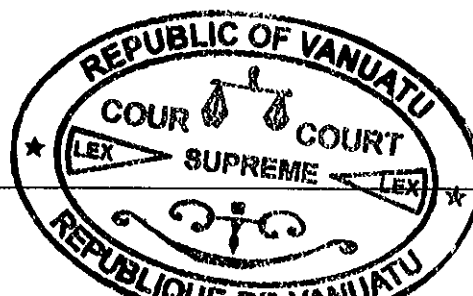
- 11.(1) *The Clerk shall be appointed by the President on the advice of the Speaker.*
- (2) *The Clerk shall be responsible for keeping the Minutes of Proceedings of Parliament. The Minutes shall record in respect of every sitting the attendance of Members, all decisions taken and details of every division held. The Minutes of Proceedings shall be printed and distributed to all Members.*
- (3) *The Clerk shall be responsible for the safekeeping of all records, cassettes, books, Bills and any other documents laid before Parliament, which shall be open to inspection by Members at all reasonable hours.*



- (4) *The Clerk shall be responsible, under the direction of the Speaker, for the administration of the Secretariat of Parliament and he shall direct, control and co-ordinate the activities of the Secretariat and shall have direction and control over all officers and servants of Parliament.*
- (5) *The Clerk shall be responsible, under the direction of the Speaker, for the administration of the budget of Parliament and shall keep adequate accounting records and prepare an estimated budget of expenses for each financial year.*
- (6) *The Clerk shall perform the further duties laid upon him in these Standing Orders and all other duties in the service of Parliament ordered by Parliament or directed by the Speaker.*
- (7) *Whenever the Clerk is absent, incapable of performing his duties or the office of Clerk becomes vacant, the powers, functions and duties of the Clerk shall be exercised and performed by the Assistant Clerk, or a person nominated for that purpose by the Speaker."*

#### **"Extraordinary Session**

14. (1) *Whenever the Speaker so decides or is requested by the Prime Minister or the majority of the Members of Parliament, he shall summon Parliament to meet in extraordinary session.*
- (2) *Any request made to the Speaker under paragraph (1) shall be in writing and shall be signed by the Prime Minister or the Members requesting the extraordinary session. Such request shall contain:*
  - (a) *The reason for which an extraordinary session is requested;*
  - (b) *A statement of the specific matter or matters to be discussed during the extraordinary session;*
  - (c) *The expected duration of the extraordinary session and a proposed date for its opening.*
- (3) *The business to be transacted by Parliament during an extraordinary session shall be limited to the matter or matters referred to in the request made to the Speaker under paragraph (2).*
- (4) *An extraordinary session shall be limited to one meeting of Parliament, unless the Speaker otherwise decides for special reasons.*
- (5) *The Clerk shall send to each Member a notice stating that the extraordinary session will commence on the date specified therein. The notice shall contain a statement of the matter or matters to be discussed during such*



session. The notice shall be given at least seven (7) days before the day appointed for the opening of the extraordinary session."

### **"Private Bills**

24. (1) Private Bills shall consist of Bills presented by Members who are not Ministers.
- (2) Private Bills shall be subject to the same stages and rules of procedure as those laid down for Government Bills.
- (3) In determining the order of private Bills on the Agenda, the Speaker shall have regard to:
- (a) The wishes expressed to him by the Members presenting the private Bill.
  - (b) The time when the private Bill was presented by the Member.
  - (c) Any private Bill which is set down for any sitting day and which is not disposed of by 11.30 shall without question put, be postponed until the sitting day during which private Bills shall be studied.

### **Government Bills**

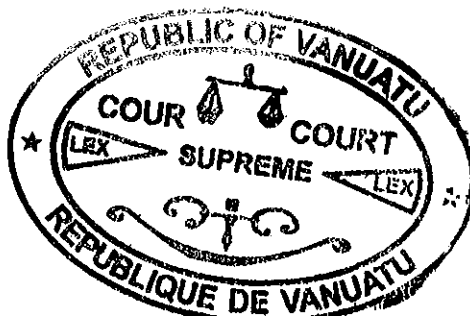
25. (1) Government Bills shall consist of Bills presented by any Minister.
- (2) The Government shall decide the order in which Government Bills shall be placed on the Agenda.

### **Procedure on introduction of a Bill**

26. (1) Any Member or Minister who wishes to introduce a Bill before Parliament shall supply to the Clerk sufficient printed copies in French and English not less than fifteen (15) days prior to the meeting at which the Bill is to be introduced."

### **"Written Motions**

35. (1) Any Member who wishes to move a written motion shall give notice thereof by delivering to the Clerk a copy of it signed by him and by one other Member acting as seconder not less than three (3) clear days before the day on which he intends to move such motion.
- (2) The Clerk shall give a copy of the motion to each Member as soon as possible before the time on which the motion shall be debated.
- (3) The rules contained in Standing Orders 34 shall apply to the contents of any written motion.



- (4) When a written motion has been moved, the Speaker shall propose the question thereon to Parliament in the same terms as the motion and a debate may then take place. The mover, or in his absence the seconder, shall be entitled to open such debate and shall have a right of reply.
- (5) When the debate on the motion has been concluded, the question shall forthwith be put by the Speaker.
- (6) A motion may be withdrawn with the leave of the speaker before the question has been fully put thereon; but if so withdrawn the motion may be moved again at some other sitting after due notice."

### **"Decision of the Speaker**

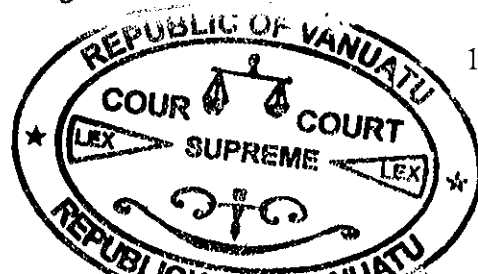
45. The opinion or a decision of the Speaker as to any question related to the application or interpretation of these Standing Orders shall not be challenged except on a written motion made in accordance with Standing Order 35.

### **Motion to Suspend Standing Orders**

46. (1) Whenever the Speaker is satisfied that there is a case of urgent necessity for the proper conduct of the business of Parliament, any Order may be suspended on oral motion without notice. If such motion be agreed to, these Standing Orders shall be suspended so far as is necessary to carry out the object for which the motion was made.
- (2) A motion to suspend Standing Orders shall require to be seconded and shall not take effect unless it has been supported by the votes of not less than two-thirds of the Members present.
- (3) When the conduct of the business of Parliament requires, the Speaker may, with the unanimous consent of the Members present, suspend any specified Standing Order."

### **"Annual Appropriation Bill**

50. (1) The Annual Appropriation Bill shall be presented on any convenient day during the second ordinary session of each year.
- (2) The Appropriation Bill shall be presented by the Minister responsible for Finance. The government shall supply to the Clerk sufficient printed copies of the Bill in French and English not less than thirty (30) days prior to the meeting at which the Bill is to be



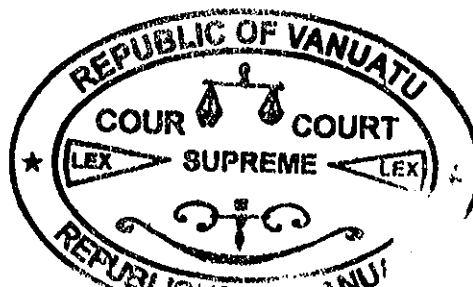
introduced.

- (3) *The Clerk shall send a copy of the Appropriation Bill in French and English to each Member not less than (25) twenty five days prior to the meeting at which the Bill is to be introduced.*
- (4) *Subject to paragraph (5) and (6), not more than (10) ten days shall be allotted for the consideration of the Appropriation Bill by the Committee of the whole House. The days so allotted shall not include any day on which the Appropriation Bill does not stand first in the list of Government Bills on the Agenda.*
- (5) *The days occupied by the Consideration of a supplementary Appropriation Bill or of any supplementary estimate shall not be included in the ten days period.*
- (6) *A Member may move orally, without notice, that additional time not exceeding (5) five days may be allotted for the consideration of the Appropriation Bill. Such motion shall be seconded and decided without amendment or debate.*
- (7) *On the last of the days allotted for the consideration of the Appropriation Bill, including any additional days allotted under paragraph (6), the Speaker shall forthwith put every question necessary to dispose of the vote then under consideration, and shall then put the question with respect to each head of the budget, that the total amount of the vote outstanding in that head be granted for the services defined in the head.*
- (8) *For the purposes of this Standing Order, the Appropriation Bill shall include the annual estimates of revenue and expenditure, any supplementary or additional budget for the current financial year and any excess vote.*

### **Financial Bills or Motions**

51. *Only a Minister may present:*

- (a) *a Bill, including any amendment to a Bill, which in the opinion of the Speaker, makes provision for any of the following purposes :*
  - (i) *the imposition of taxation or the alteration of taxation otherwise than by reduction.*
  - (ii) *the imposition of any charge upon the Revenue Fund or Public Funds of the Republic of Vanuatu or the alteration of any such charge.*



- (iii) *the payment, issue or withdrawal from the Revenue Fund or Public Funds of the Republic of Vanuatu of any moneys not charged thereon or any increase in the amount of such payment, issue or withdrawal.*
- (iv) *the composition or re-mission of any debt due to the Govern merit of the Republic of Vanuatu.*
- (b) *a motion the effect of which, in the opinion of the Speaker, is that provision would be made for any of the purposes aforesaid."*

The following cases are the relevant authorities:

1. **Attorney-General v. Jimmy**, CAC No.7 of 1996
2. In the **Constitutional President v. Korman**, CAC No.8 of 1997
3. **Natapei v. Tari** - Supreme Court Case No.35 of 2001; **Tari v. Natapei** (2001) VUCA
4. **Vohor v. Attorney**, CAC No.24 of 2004
5. **Carcasses v. Republic of Vanuatu** [2008] VUSC 79 and on appeal, **Republic of Vanuatu v. Carcasses** [2009] VUCA 34 (16 July 2009).

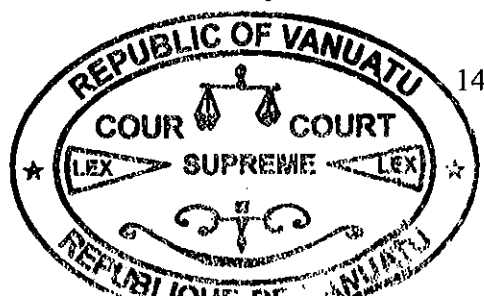
These judgments of the Supreme Court and the Court of Appeal are the guiding judgments I will apply in the present case.

I remind myself that the main issue in this case is whether or not when the Speaker of Parliament had closed the Sixth Extraordinary Session of Parliament on Friday 19 August 2011 that closure constitutes an infringement of the constitutional rights of the Applicants?

I propose to give an answer to the main issue by dealing with the following specific questions.

First, was Parliament seized of business when the Speaker summoned Parliament to meet in its Sixth Extraordinary Session on 19 August 2011?

The undisputed facts are that on 12 August 2011, the Prime Minister wrote to the Speaker requesting that Parliament meet in its Sixth Extraordinary Session. The



purpose of the extraordinary session is for Parliament to consider 3 Government Bills and a motion. The duration of the session was scheduled for 21 days or until all matters listed on the agenda were disposed off. On 12 August 2011, the Speaker issued a Summons for Parliament to meet in its Sixth Extraordinary Session on Friday 19 August 2011. The Clerk of Parliament issued a Notice to all members of Parliament to meet in its Sixth Extraordinary Session on Friday 19 August 2011 at 8.30am o'clock and enclosed the agenda of the said session.

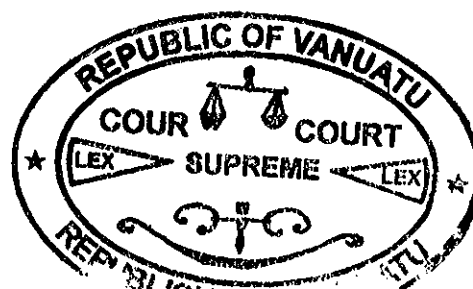
The three Government Bills were before Parliament on 16 August 2011, Parliament was seized with an agenda of business to deal with.

Second, was Parliament still seized of business when the Sixth Extraordinary Session of Parliament was closed by the Speaker on 19 August 2011?

On the undisputed facts, Parliament sat on Friday 19 August 2011 at 8.30am o'clock as summoned by the Speaker of Parliament. It was an Extraordinary Session of Parliament at the Request of the Prime Minister pursuant to Article 21(2) of the Constitution. There was an agenda for business to deal with by Parliament. The Speaker opened Parliament, made announcement and raised his concerns about the non-compliance of the Standing Orders of Parliament and the public expenditure and had closed the Sixth Extraordinary Session of Parliament. At no stage the Speaker allowed the Parliament to deal with the agenda of business of Parliament on 19 August 2011.

I accept the learned Attorney-General submissions that it is not open for the Respondent Speaker to close Parliament while matters to be discussed and or debated upon have not been disposed of.

The fact is that the Respondent Speaker accepted the agenda of business before Parliament on 19 August 2011. Once the Respondent had accepted the agenda, he was not competent to close Parliament while the matter to be debated had not been voted upon by Parliament. This means that upon the Speaker accepting the request made by the Prime Minister and upon convoking Members of Parliament any matters



to be discussed can only be made by Parliament pursuant to Article 21(3) of the Constitution.

The contentions put on behalf of the Respondent Speaker to the contrary are rejected. The Parliament was still seized of business when the Sixth Extraordinary Session of Parliament was closed by the Respondent Speaker on Friday 19 August 2011.

Third, was the closure of the Sixth Extraordinary Session of Parliament on Friday 19 August 2011 lawful?

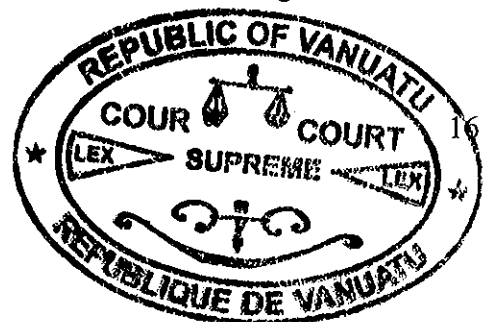
I answer to this question in the negative.

Fourth, was there any infringement of the constitutional rights consequent on the closure of the Sixth Extraordinary Session of Parliament on 19 August 2011?

I answer to this question in the affirmative. The Respondent Speaker has infringed the provisions of Article 21(3) of the Constitution in that it did not allow Parliament to make its decision by public vote by a simple majority on matters before it. In the circumstances of this case, once the Respondent Speaker had accepted the request from the Prime Minister under Article 21(2) of the Constitution, the only possible circumstances in which the agenda before Parliament could be disposed of was by Parliament pursuant to Article 21(3) of the Constitution. In the light of the facts of the present matter, the Respondent Speaker failed to adhere to the requirements of Article 21(3) of the Constitution.

On a final note, there are ways within the Standing Orders of Parliament to remedy the non-compliance of the Standing Orders of Parliament instead of the Respondent Speaker to have recourse to the closing of that Extraordinary Session depriving the Applicants and Members of Parliament their constitutional rights.

On the basis of the above considerations, the Court makes the following Orders:



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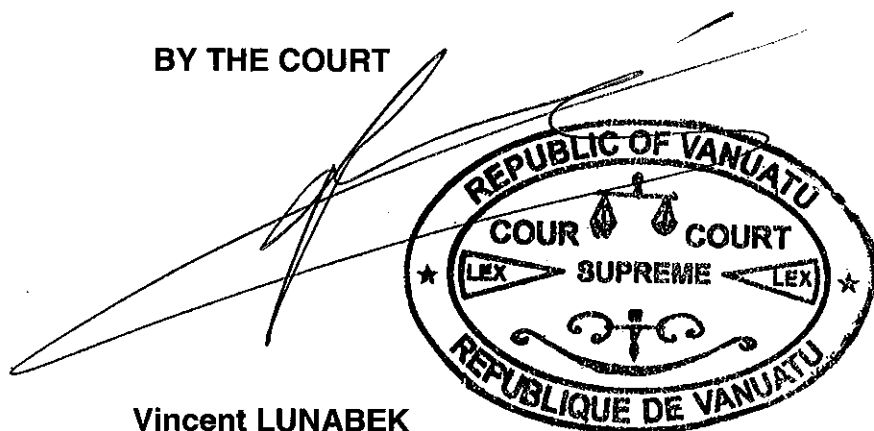


## **ORDERS**

1. That the Sixth Extraordinary Session of Parliament is still seized of its outstanding business.
2. That the Ruling of the Respondent Speaker on 19 August 2011 to close the Sixth Extraordinary Session of Parliament constitutes an infringement of Article 21 of the Constitution and is void and of no effect.
3. That Parliament meet forthwith to continue and complete its business as itemized in the agenda for the Sixth Extraordinary Session of Parliament.
4. The Applicants are entitled to their costs to be agreed or taxed.

**DATED at Port-Vila this 23<sup>rd</sup> day of August 2011**

**BY THE COURT**



**Vincent LUNABEK  
Chief Justice**