

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

Constitutional Case No.10 of 2011

BETWEEN: HON. MAXIME CARLOT KORMAN
Applicant

AND: THE PARLIAMENT OF THE
REPUBLIC OF VANUATU
First Respondent

AND: THE REPUBLIC OF VANUATU
Second Respondent

Coram: *V. Lunabek CJ*

Counsel: *Mr Edward Nalyal for the Applicant*
Mr Frederick Gilu of State Law Office for the First and Second Respondents

REASONS FOR JUDGMENT

INTRODUCTION:

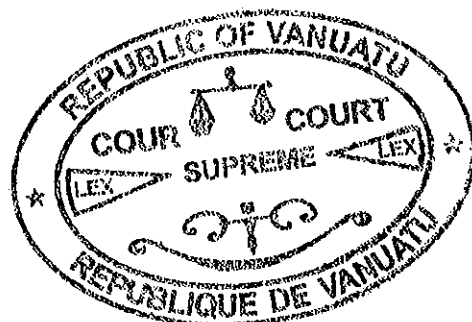
This is a Constitutional Application filed and further amended by the Applicant on 12 October 2011. The Applicant is Honourable Maxime Carlot Korman, the Member of Parliament of Port Vila Constituency and then Speaker of Parliament of Vanuatu. The Applicant challenges the Constitutional validity of a number of Resolutions passed by Parliament on 9th September 2011 against him and applies for various declarations and orders against the First and Second Respondents, namely, the Parliament of the Republic of Vanuatu and the Republic of Vanuatu.

BACKGROUND:

The facts of this case are not in dispute. The brief background of this case are contained in the sworn statement of Applicant, Honourable Maxime Carlot Korman, filed 15 September 2011; the sworn statement of Lino Bulekuli Dit Sacsac, Clerk of Parliament, filed 2 November 2011 and the statement of Tony Amos Sewen, Acting Director of the Department of Finance within the Ministry of Finance and Economics Management filed 2 November 2011. These facts are summarized as follows:

On 12 August 2011, The Prime Minister requested the Applicant, the then Speaker of Parliament to convene Parliament for the sixth Extra-Ordinary Session ("6th Session"). The purpose of the request was for Parliament to deliberate on 3 bills and a written motion, namely:

BILLS:



1. Bill for the Supplementary Appropriation (2011) Act No. of 2011
2. Bill for the Airport Duties (Amendment) (Consolidation) Act No of 2011.
3. Bill for the Rome Statute of the International Criminal Court (Ratification) Act No of 2011

MOTIONS:

1. The Motion to remove the Speaker of Parliament and elect a new Speaker of Parliament.

The Prime Minister's letter also anticipated that the duration for the 6th Session of Parliament would be 21 days

On 12 August 2011, the Applicant wrote to the Prime Minister accepting his request to convene a 6th Session of Parliament.

On 12 August 2011, among the agenda of Parliament scheduled to be debated was a motion to remove the Applicant as Speaker. The motion was deposited by Honourable Willie Lop and Honourable Toara Daniel to Parliament at 2.20pm.

On 16 August 2011, subsequent to Summons, being issued to Members of Parliament, the 6th Session of Parliament began.

On 6 September 2011 at 3.57pm, Honourable Willie Lop and Honourable Toara Daniel again deposited to Parliament a motion to discipline the Applicant.

On the evening of 6 September 2011, the motion to remove the Applicant as Speaker was passed by Parliament. Parliament then proceeded to elect Honourable Dunstan Hilton as the new Speaker.

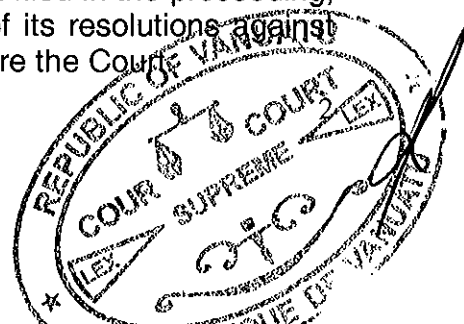
Upon assuming the role of Speaker, Honourable Dunstan Hilton adjourned Parliament to 7 September 2011.

On 7 September 2011, when Parliament met, the Speaker stated that the Supplementary Appropriation Bill would be debated on 8 September 2011.

On 8 September 2011, the Supplementary Appropriation Bill was passed by Parliament.

The Speaker then announced that Parliament would be adjourned to 9 September 2011, for Parliament to debate on the motions lodged by the Government on 6 September 2011.

On the 9 September 2011, Parliament debated and passed the motions lodged by the Government and this included the motion to discipline the Applicant. The sworn statement of the Applicant and that of the Clerk of Parliament filed in the proceeding, exhibit the detailed reasons or justifications by Parliament of its resolutions against the Applicant, the legality of which he is now challenging before the Court.



Paragraph H of the Motion No.5 of 2011 heading: "Discipline of the Honourable Maxime Carlot Korman" reflects a summary of the bases or justifications of the Parliament's resolutions against the Applicant. It reads:

"H. By virtue of failing to maintain the neutrality required of this high Constitutional Office, and by virtue of his conduct in making unconstitutional decisions and by acting in breach of the Standing Orders of Parliament and the law while holding his high office, the Honourable Maxime Carlot Korman has brought disrepute upon Parliament, the office of the Speaker and the integrity of the institution and its Members."

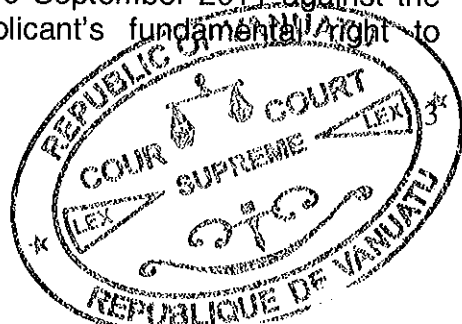
On 9 September 2011, Parliament by motion voted the following resolutions against the Applicant, Honourable Maxime Carlot Korman:

1. That the Honourable Maxime Carlot Korman has acted in contempt of Parliament and the Constitution.
2. That the Honourable Maxime Carlot Korman shall be suspended from Parliament for the rest of the Parliamentary term of the 9th Legislature.
3. That the Honourable Maxime Carlot Korman shall not hold any Parliamentary posts for the rest of Parliamentary term of the 9th Legislature.
4. That because the Honourable Maxime Carlot Korman has, with prior knowledge, made unconstitutional rulings as the Speaker of Parliament that have caused enormous expense to the public purse, he shall personally pay all the legal costs incurred by the State in Constitutional Case No.2 of 2011, Civil Appeal Case No.9 of 2011, Constitutional Case No.5 of 2011, Civil Appeal Case No.16 of 2011 and Constitutional Case No.7 of 2011, and by the Applicant MP Marcellino Pipite in Constitutional Case No.8 of 2011.
5. That the Ministry of Finance shall with immediate effect begin deducting the Honourable Maxime Carlot Korman's salary, allowances, gratuities and other financial entitlements until such time as all legal costs incurred by the State in Constitutional Case No.2 of 2011, Civil Appeal Case No.9 of 2011 and Constitutional Case No.7 of 2011, and by the Applicant MP Marcellino Pipite in Constitutional Case No.8 of 2011, are paid and/or refunded in full.

DECLARATIONS AND ORDERS SOUGHT:

It is against the above Parliamentary of Resolutions of 9 September 2011 that the Applicant brings this application and applies for the following declarations and orders:

1. A declaration that Parliament's Resolution on 9 September 2011 against the Applicant, are an infringement of the Applicant's fundamental right to

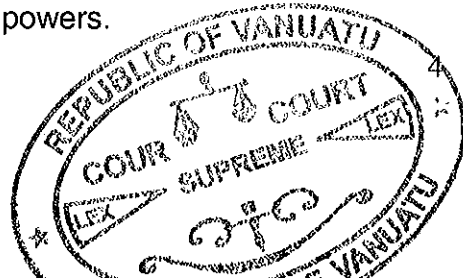


- protection of the law, and equal treatment under the law, and therefore are unconstitutional, null and void and of no effect.
2. A declaration that Parliament's resolution, that the Honourable Maxime Carlot Korman has acted in contempt of Parliament and the Constitutional, is Unconstitutional, null and void and of no effect.
 3. A declaration that Parliament's resolution that the Hon. Maxime Carlot Korman shall be suspended from Parliament for the rest of the Parliamentary term of the 9th Legislature, is unconstitutional, null and void, and of no effect.
 4. A declaration that Maxime Carlot Korman shall continue to be a Member of Parliament until the next general elections to elect new members of Parliament.
 5. A declaration that Parliament's resolution that the Honourable Maxime Carlot Korman shall not hold any Parliamentary posts for the rest of the Parliamentary term of the 9th legislature, is unconstitutional, null and void and of no effect.
 6. A declaration that Parliament's resolution that Honourable Maxime Carlot Korman shall personally pay all legal costs incurred by the State in various constitutional cases in 2011, is unconstitutional, null and void and of no effect.
 7. A declaration that Parliament's resolution, that the Ministry of Finance shall with immediate effect begin deducting the Honourable Maxime Carlot Korman's salaries, allowances, gratuities and other financial entitlements until such time as all legal costs incurred by the State in the various constitutional cases are paid in full, is unconstitutional, null and void and of no effect.
 8. An order that Parliament, and the Republic of Vanuatu forthwith reinstate all monetary entitlements of Maxime Carlot Korman including, but not limited, to salary, allowances, gratuities, and MP allocations and pay immediately any accrued since the 9 September 2011 to the Applicant.
 9. Costs against the First Respondent on indemnity basis, or on any other basis the Court considers just.
 10. Any other orders this Court considers just.

CASE OF APPLICANT:

It is alleged by the Applicant that the resolutions passed by Parliament are in breach of the fundamental rights guaranteed to him by the Constitutional namely Article 5(1) (d) and (k). The Applicant also alleged that the resolutions passed by Parliament are in breach of the provisions of the Constitution namely Article 27(1), Article 39 (1), and Article 47 (1).

The Applicant contended that he was not afforded equal treatment under the law, that his privileges as a Member of Parliament and then Speaker of Parliament were denied, and that the Parliament had acted beyond its powers.



RESPONSE TO THE APPLICATION:

The First and Second Respondents filed a response to the Application on 27 October 2011. In substance, they say that on 12 August 2011, the Prime Minister wrote to the Applicant requesting him to summon Parliament to meet for a 6th Extra-Ordinary Session of Parliament in accordance with Article 21(2) of the Constitution. They say that on 6 September 2011, Motion No.5 of 2011 under the Heading: "Discipline of Honourable Maxime Carlot Korman" was deposited at Parliament in accordance with standing order 14(2) of the Standing Orders of Parliament clearly outline that in a request calling for an Extra-Ordinary Session of Parliament, such a request shall consist amongst others the expected duration of the Extra-Ordinary Session and the letter from the Prime Minister requesting a 6th Extra-Ordinary Session of Parliament anticipated a duration of 21 days.

They say that on 9 September 2011, the motion to discipline the Applicant was debated and carried by a majority of 26 members of Parliament and the manner in which the Applicant was disciplined is in accordance with Article 21(3) and 21(5) of the Constitution. They further say that in passing the motion to discipline the Applicant, it does not in any way violate his fundamental rights guaranteed by Article 5(1)(d) and (k). They also say that in passing the motion against the Applicant, Parliament does not in any way violate Article 27(1), Article 39(1) and Article 47 (1) of the Constitution. They further say that the Applicant's misfortune was the result of his own wrongdoing and as such he was disciplined by the majority of the members of Parliament. They finally say that the Applicant is not entitled to the relief or to any relief he is seeking.

CASE OF RESPONDENTS:

It is the Respondents' case that in undertaking to pass the resolution of 9 September 2011, Parliament had complied with Article 21(3) and Article 21(5). It is the Respondents' case that Articles 5(1) (d) and (k), 27(1), 39(1) and 47(1) of the Constitution were not infringed.

THE LAW:

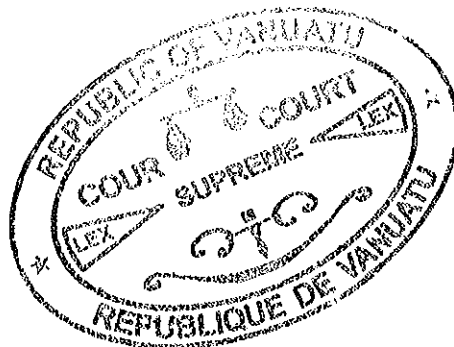
Article 2 of the Constitution provides:

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

Article 5(1) (d) and (k) of the Constitution provides:

"(1) The Republic of Vanuatu recognizes, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual with discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health –

...



- (d) *protection of the law:*
- (k) *equal treatment under the law or administrative action, except that no law shall be inconsistent with the sub-paragraph insofar as it makes provision for the special benefit, welfare, protection or advancement of females, children and young persons, members of under-privileged groups or inhabitants of less developed areas."*

Article 6 (1) (2) of the Constitution says:

"Anyone who considers that any of the rights guaranteed to him by the Constitution has been, is being or is likely to be infringed may, independently of any other possible legal remedy, apply to the Supreme Court to enforce that right.

The Supreme Court may make such orders, issue such writs and give such directions, including the payment of compensation, as it considers appropriate to enforce the right."

Article 21(3)(5) of the Constitution provides:

"Unless otherwise provided in the Constitution, Parliament shall make its decisions by public vote by a simple majority of the members voting.

*...
Parliament shall make its own rules and procedure."*

Article 27(1)(2) of the Constitution provides:

"No Member of Parliament may be arrested, detained, prosecuted or proceeded against in respect of opinions given or votes cast by him in Parliament in the exercise of his office.

No member may, during a Session of Parliament or of one of its Committees, be arrested or prosecuted for any offence, except with the authorization of Parliament in exceptional circumstances."

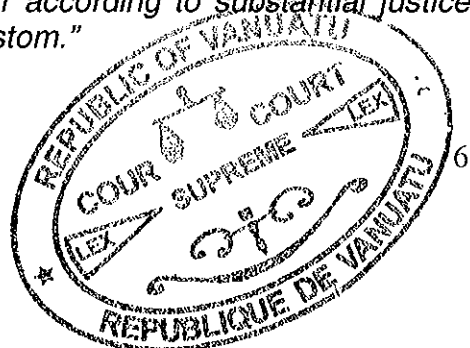
Article 39(1) of the Constitution provides:

"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."

Article 47(1) of the Constitution provides:

"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. If there is no rule of law applicable to a matter before it, a court shall determine the matter according to substantial justice and whenever possible in conformity with custom."

Article 53(1) (2) of the Constitution provides:



“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.

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.”

ISSUES:

The issues before the court are:

1. Whether Parliament has the prerogative to hold that the Applicant has acted in contempt of the Constitution?
2. Whether the Fundamental Rights of the Applicant guaranteed under Articles 5(1)(d) and (k) and 5(2) of the Constitution have been infringed by the Resolutions of Parliament of 9 September 2011?
3. Whether by resolving that the Applicant shall pay all legal costs incurred by the State in respect to Court cases or cases already decided by the Court, Parliament had acted contrary to Article 47(1) of the Constitution?
4. Whether Parliament has the prerogative by resolution to direct the Ministry of Finance to deduct monetary entitlements of the Applicant in light of Article 39(1) of the Constitution?
5. Whether Parliament has the prerogative to take disciplinary action against the Applicant by suspending the Applicant from the remainder of the 9th Legislature in light of Article 27(1) of the Constitution?

APPLICATION OF LAW:

I apply the law by considering and dealing with each of the issues raised above.

1. **Whether Parliament has the prerogative to hold that the Applicant has acted in contempt of the Constitution?**

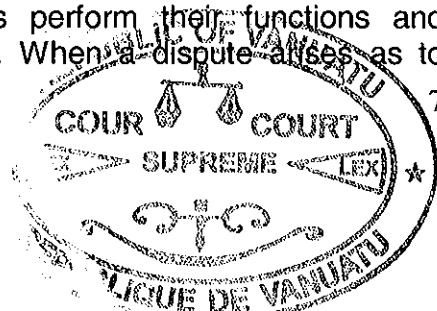
The Applicant contends that Parliament has no power to hold him in contempt of the Constitution.

Resolution 1 reads:

“That the Honourable Maxime Carlot Korman has acted in contempt of Parliament and the Constitution.” [Emphasis added]

The contention of the Applicant is correct. Parliament can find or can hold that a Member of Parliament acted in contempt of Parliament. However, Parliament cannot find or hold that a Member of Parliament acted in contempt of the Constitution.

It is presumed that Parliament and its members perform their functions and responsibilities in accordance with the Constitution. When a dispute arises as to



whether the Parliament or a Member of Parliament or an officer of the Parliament acted in accordance with the Constitution, Parliament is not competent to answer that question. The answer to be given to that question is a constitutional answer. It is not a matter within the internal proceedings of Parliament. The Constitution of the Republic places the duty and responsibility of all constitutional questions or challenges in the Supreme Court. The Supreme Court is the sole custodian and protector of the Constitution of Vanuatu. The following Articles of the Constitution reflect the constitutional responsibility of the Supreme Court:

Articles 6(1)(2); 16(4); 39(3); 47(1); 49(1) 53(1)(2)(3); 54 and 72. The second limb of Parliament Resolution No.1 of 9 September 2011 is unconstitutional, null and void and of no effect.

2. Whether the Fundamental Rights of the Applicant guaranteed under Articles 5(1)(d) and (k) and 5(2) of the Constitution have been infringed by the Resolutions of Parliament of 9 September 2011?

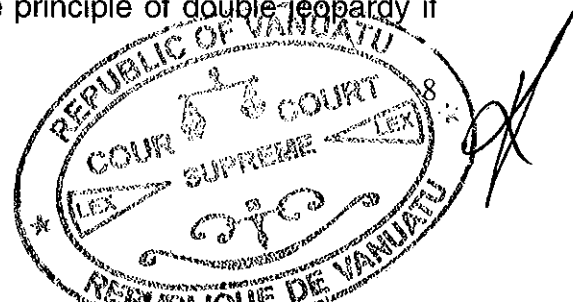
It is important to note from the outset that Mr Edward Nalyal, counsel for the Applicant informed the Court and counsel for the Respondents during the hearing of the Constitutional Application that the Applicant has no issue with the due process of his suspension by Parliament and he does not challenge that. The Applicant's challenge is on different ground.

The Applicant contends that his rights of the protection of the law and equal treatment under the law guaranteed under Article 5(1)(d) and (k) have been infringed by the Resolutions of Parliament against him. The reason for such a contention is that he is punished twice for the same matter, for the Court has punished him already by ordering the Applicant to pay the costs of the cases before the Court personally and Parliament by suspending him for the rest of the 9th Legislature Parliament, for the same court case amounts to double punishment. Mr Nalyal referred specifically to Article 5(2)(h) which provides:

"No person who has been pardoned, or tried and convicted or acquitted, shall be tried again for the same offence or any other offence of which he could have been convicted at his trial."

This Applicant's contention has no merit and must fail for the following reasons: First, court proceedings made against the Applicant resulting in costs orders made against the Applicant personally are different in their nature, extent and merit from disciplinary actions taken by Parliament against the Applicant as a Member of Parliament. They are two different matters altogether. Court proceedings against the Applicant resulting in orders against him personally to pay the costs of these proceedings do not stop Parliament to exercise its disciplinary action against one of its members and here the Applicants, if Parliament in its wisdom, considers appropriate to do so to vindicate its privileges and protect its proceedings and integrity by contempt.

Second, by perusing the provisions of Articles 5(1)(d) and 5(2)(h), I accept the submissions of the Respondents that the principle of double punishment would be related to criminal proceedings or circumstances in which the Applicant has been convicted. The Applicant has never been tried or convicted and punished for a criminal offence. This would also be the same for the principle of double jeopardy if



submissions are made to that effect. In this case, no submissions are made on the principle of jeopardy.

Finally, as to the Applicant's rights of equal treatment under the law, Mr Naiyal was unable to assist the Court when the Court asked him to refer the Court to the law and the circumstances created by that law under which on comparable or similar situations, the Applicant alleges that he was not equally treated under it.

There is no infringement of the rights of the Applicant under Article 5(1)(d) (k) and 5(2)(h) as contended by the Applicant.

3. Whether by resolving that the Applicant shall pay all legal costs incurred by the State, in respect to Court proceedings, Parliament had acted contrary to Article 47(1) of the Constitution?

Parliament Resolution 4 of 9 September 2011 reads:

"That because the Honourable Maxime Carlot Korman has, with prior knowledge, made unconstitutional rulings as the Speaker of Parliament that have caused enormous expense to the public purse, he shall personally pay all the legal costs incurred by the State in Constitutional Case No.2 of 2011, Civil Appeal Case No.9 of 2011, Constitutional Case No.5 of 2011, Civil Appeal Case No.16 of 2011 and Constitutional Case No.7 of 2011, and by the Applicant MP Marcellino Pipite in Constitutional Case No.8 of 2011."

The Applicant contends that Parliament cannot by Motion make the resolution in the nature of its Resolution No.4 of 9 September 2011. The Applicant submits that Resolution 4 is in breach of Article 47(1) of the Constitution as it interferes with the function and jurisdiction of the Courts.

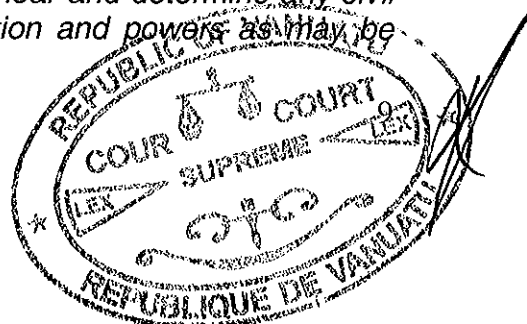
It is common ground that the cases referred to in the Parliament's Resolution 4 are subject to Court proceedings and dealt with by the Courts according to the Constitution and the law. They are Court matters but they are not part of Parliament internal matters or proceedings. I accept the Applicant's submission that Parliament's Resolution No.4 of 9 September 2011 against the Applicant is contrary to Article 47(1) of the Constitution. The function and the jurisdictions of the Supreme Court and the Court of Appeal are spelt out under Chapter 8 of the Constitution. Article 47(1) provides:

"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. If there is no rule of law applicable to a matter before it, a Court shall determine the matter according to substantial justice and whenever possible in conformity with custom."

By Article 49(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 50 provides for Parliament to provide for appeals from the original jurisdiction of the Supreme Court and appeals from such appellate jurisdiction as it may have to the Court of Appeal. Parliament enacted the Judicial Services and Court Act and other legislations to this effect.

The cases referred to in Parliament Resolution No.4 of 9 September 2011, are all Constitutional Applications before the Supreme Court and on appeal before the Court of Appeal. They were brought before the Courts under Articles 6(1)(2) and/or 53(1)(2) of the Constitution which respectively provide:

"6. Enforcement of fundamental rights

- (1) *Anyone who considers that any of the rights guaranteed to him by the Constitution has been, is being or is likely to be infringed may, independently of any other possible legal remedy, apply to the Supreme Court to enforce that right.*
- (2) *The Supreme Court may make such orders, issue such writs and give such directions, including the payment of compensation, as it considers appropriate to enforce the right."*

"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."*

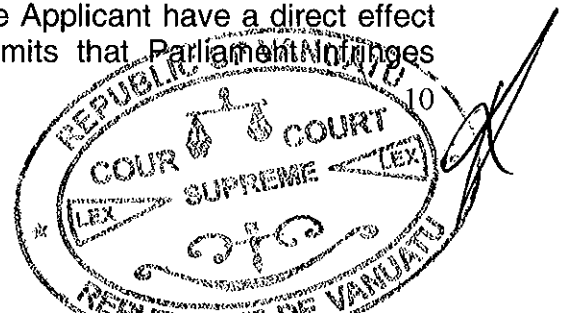
In light of the above considerations, Parliament Resolution No.4 of 9 September 2011 against the Applicant, is unconstitutional, null and void and of no effect.

4. Whether Parliament has the prerogative by resolution to direct the Ministry of Finance to deduct monetary entitlements of the Applicant in light of Article 39(1) of the Constitution?

Parliament Resolution No.5 reads:

- "5. That the Ministry of Finance shall with immediate effect begin deducting the Honourable Maxime Carlot Korman's salary, allowances, gratuities and other financial entitlements until such time as all legal costs incurred by the State in Constitutional Case No.2 of 2011, Civil Appeal Case No.9 of 2011 and Constitutional Case No.7 of 2011, and by the Applicant MP Marcellino Pipite in Constitutional Case No.8 of 2011, are paid and/or refunded in full."

Parliament's direction over the Ministry of Finance for the deduction of salaries, allowances, gratuities and financial entitlements of the Applicant have a direct effect on the Applicant. The Applicant contends and submits that Parliament infringes



Article 39(1) of the Constitution when passing its resolution 5 on 9 September 2011. The Applicant further submits that Parliament cannot direct one branch of the Executive Government by a resolution to do something for Parliament wishes. The Applicant submits that there must be a law made by Parliament to direct the Executive Government or the Judiciary to do something. The Applicant further submits that the Resolution 5 made by Parliament on 9 September 2011 directing the Ministry of Finance to deduct the salaries, allowances, gratuities and other financial entitlements with a direct effect on the Applicant, is not a law and as such it infringes Article 39(1) of the Constitution.

I agree with the Applicant's submissions that Parliament Resolution 5 of 9 September 2011 is contrary to Article 39(1) of the Constitution which provides:

"39. Executive Power

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

Parliament Resolution No.5 of 2011 is therefore unconstitutional, null and void and of no effect.

5. Whether Parliament has the prerogative to take disciplinary action against the Applicant by suspending the Applicant from the remainder of the 9th Legislature in light of Article 27(1) of the Constitution?

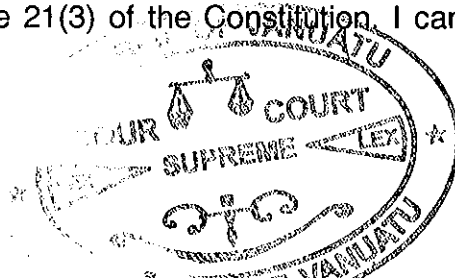
Parliament, on 9 September 2011, considered among other matters that the Applicant failed to maintain the neutrality required of the office of the Speaker by making unconstitutional decisions and acting in breach of the Standing Orders of Parliament and the law, and that the Applicant has brought disrepute upon Parliament, the Office of the Speaker and the integrity of the institution of Parliament and its Members, Parliament resolved:

- "1. That the Applicant has acted in contempt of Parliament (...).
2. That he shall be suspended from Parliament for the rest of the Parliamentary term of the 9th Legislature.
3. That he shall not hold any Parliamentary posts for the rest of Parliamentary term of the 9th Legislature." (which are Resolutions 1, 2 and 3).

I note from the outset that the powers and privileges of Parliament are not specified in the Constitution. No legislation has been passed to define the privileges of Parliament. It is accepted that when the privileges are defined by law they will be subject to the Constitution, and the guarantees of fundamental rights enshrined in the Constitution.

Article 21(5) of the Constitution provides for Parliament to make its own rules of procedure. Standing Orders of Parliament are made on that basis.

Standing Order 43 provide for a Member of Parliament to raise a matter of privilege to Parliament and the manner to do that. Standing Orders 40(4) provides for Parliament to suspend any Member of Parliament by motion carried by simple majority through public vote pursuant to Article 21(3) of the Constitution. I can see



A handwritten signature in black ink, located at the bottom right of the page.

X that there is a source of authority that mandates Parliament to suspend the Applicant and since the due process of suspension is not challenged by the Applicant, I accept that the constitutional requirements have been met in that the resolutions were passed in accordance with Article 21(3) of the Constitution. It is noted that all breaches of Parliament Privilege are dealt with as contempt of Parliament. I treat the Resolutions 1, 2 and 3 as matters within the internal proceedings of Parliament. I should not enquire further. However, in this Republic, the Constitution is the supreme law of the land. It is therefore my view that subject to the Constitution, and the fundamental rights guaranteed in the Constitution, Parliament can vindicate its own privileges by taking disciplinary actions against its Members and others whom Parliament adjudges to have broken them. X

The Applicant contends that in suspending him for the remainder of the 9th Legislature of Parliament, Parliament had acted contrary to Article 27(1) of the Constitution.

The Applicant referred to the expression "proceeded against" in Article 27(1) and invite the Court to interpret that expression to include the circumstance in which Parliament dealt with him on 9 September 2011. That is to say proceedings in Parliament.

The contention of the Applicant is not tenable and is rejected for the following reasons:

Article 27 says:

- "(1) *No Member of Parliament may be arrested, detained, prosecuted or proceeded against in respect of opinions given or votes cast by him in Parliament in the exercise of his office. (Emphasis Added).*
- (2) *No member may, during a Session of Parliament or of one of its Committees, be arrested or prosecuted for any offence, except with the authorization of Parliament in exceptional circumstances."*

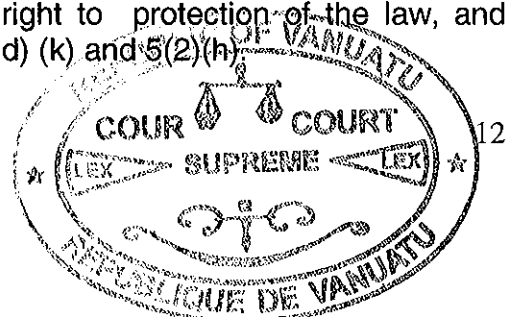
By perusing Article 27(1), it is clear that it does not protect the Applicant as Speaker of Parliament. It is not applicable to the Parliament proceedings.

Article 27(1) protects a Member of Parliament from being proceeded against in respect of opinions given or votes cast by him in Parliament in the exercise of his Office before the Courts of law. It is in that sense that the expression "proceeded against" is to be understood as meaning legal proceedings before the courts.

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

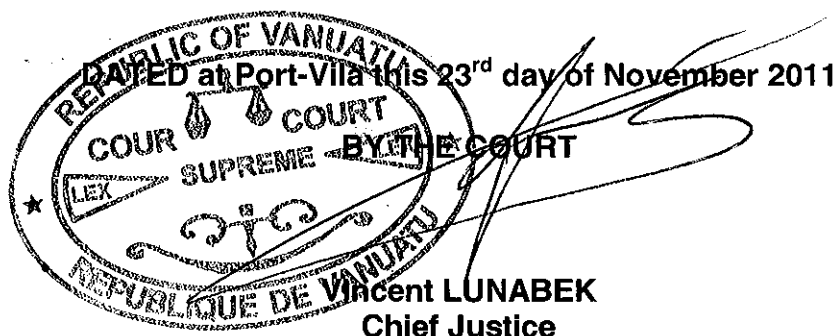
DECLARATIONS AND ORDERS

1. That Parliament's Resolution on 9 September 2011 against the Applicant, do not infringe the Applicant's fundamental right to protection of the law, and equal treatment under the law, under 5(1)(d) (k) and 5(2)(h).



X

2. That Parliament's resolution, that the Honourable Maxime Carlot Korman has acted in contempt of Parliament is within the powers and privileges of Parliament and so lawful. But the declaration that Parliament's Resolution on 9 September 2011 that the Honourable Maxime Carlot Korman has acted in contempt of the Constitution is unconstitutional, null and void and of no effect.
3. That Parliament's resolution that the Hon. Maxime Carlot Korman shall be suspended from Parliament for the rest of the Parliamentary term of the 9th Legislature, is within the powers and privileges of Parliament and so lawful.
4. That Maxime Carlot Korman shall continue to be a Member of Parliament until the next general elections to elect new members of Parliament is refused as this is a matter for Parliament.
5. That Parliament's resolution that the Honourable Maxime Carlot Korman shall not hold any Parliamentary posts for the rest of the Parliamentary term of the 9th legislature, is within the powers and privileges of Parliament. It is a matter for Parliament.
6. That Parliament's resolution that Honourable Maxime Carlot Korman shall personally pay all legal costs incurred by the State in various constitutional cases in 2011, is unconstitutional, null and void and of no effect.
7. That Parliament's resolution, that the Ministry of Finance shall with immediate effect begin deducting the Honourable Maxime Carlot Korman's salaries, allowances, gratuities and other financial entitlements until such time as all legal costs incurred by the State in the various constitutional cases are paid in full, is unconstitutional, null and void and of no effect.
8. That Parliament, and the Republic of Vanuatu forthwith reinstate all monetary entitlements of Maxime Carlot Korman including, but not limited, to salary, allowances, gratuities, and MP allocations and pay immediately any accrued since the 9 September 2011 to the Applicant is reserved pending further submissions as to the consequences of the Applicant's suspensions by Parliament and in light of the declarations made above.
9. There will be no order as to costs.
10. Next date for submissions on point 8 above Friday 25 November 2011 at 4.00pm o'clock.



 MADE at Port-Vila this 23rd day of November 2011
 Vincent LUNABEK
 Chief Justice