

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

**Constitutional Case No.02 of 2011**

**IN THE MATTER OF:** THE CONSTITUTION OF THE REPUBLIC OF VANUATU (Hereafter referred as "the Constitution")

**AND IN THE MATTER OF:** THE STANDING ORDERS OF PARLIAMENT

**BETWEEN:** HON. SATO KILMAN MP, Port Vila, Republic of Vanuatu  
Applicant

**AND:** THE SPEAKER OF PARLIAMENT OF THE REPUBLIC OF VANUATU  
First Respondent

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

**Coram:** Vincent LUNABEK CJ

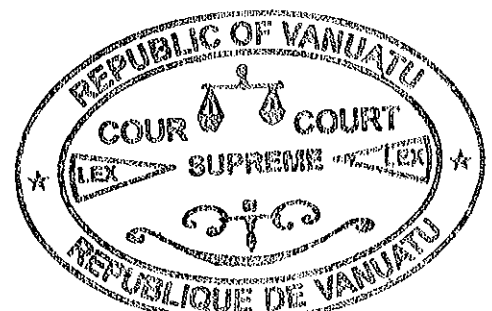
**Counsel:** Mr Daniel Yawha for the Applicant  
Mr Ronald Warsal for the First Respondent  
Mr Daniel Willie for the Second Respondent  
Mr Frederick Gilu as friend of Court

**Date of hearing:** 28-29 April 2011

**Date of Judgment:** 30 April 2011

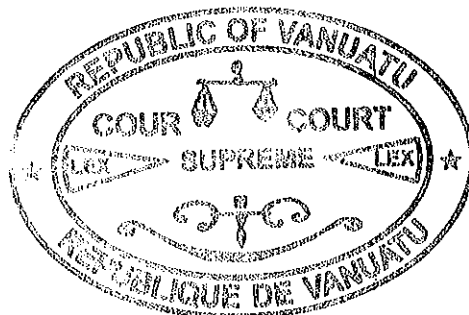
**REASONS FOR JUDGMENT**

1. This is a Further Amended Urgent Constitutional Application filed by the Applicant, Sato Kilman MP on 28 April 2011, challenging his removal by Parliament on 24 April 2011 as Prime Minister of the Republic.
2. The Applicant's contention is that the decision of the First Respondent Speaker of Parliament on 24 April 2011 that the Motion of no confidence against the Applicant was carried by 26 votes constitutes an absolute majority,

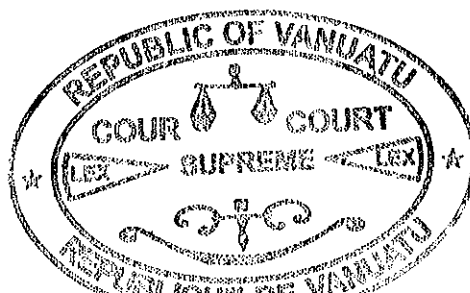


is unconstitutional. The question the Applicant poses was whether 26 was an absolute majority having regard to Article 43(2) of the Constitution.

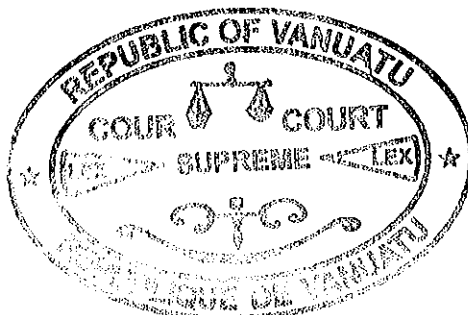
3. An additional contention is that because his removal was unconstitutional in that he was not removed by an absolute majority, the decision of the Speaker of Parliament to continue with the Parliament business to elect a new Prime Minister on 24<sup>th</sup> April 2011 was also unconstitutional. So, if the Applicant's contention is right, then, he is still the Prime Minister of Vanuatu.
4. That is the reason why he filed this Further Amended Urgent Constitutional Application pursuant to Articles 6(1), (2) and 53(1), (2) of the Constitution and asked the Supreme Court to remedy the breaches of his following constitutional rights by the First and Second Respondents:
  - Articles 5(1)(d); Article 39 (1); Article 43(2)
5. In his Urgent Application, the Applicant applies for the following relief:
  1. A definition from this Honourable Court of the term "ABSOLUTE MAJORITY" specifically in relation to section 43(2) of the Vanuatu Constitution.
  2. A declaration that the Honourable Speaker erred in his determination as the definition of the term "absolute majority" as referred to in article 43(2) of the Vanuatu Constitution.
  3. A declaration that the Applicant is the current and lawful Prime Minister of the Republic of Vanuatu.
  4. An Order that Status quo be restored in relation to the First Applicant.
  5. An Order/declaration that the purported decision of the First Respondent and Second Respondent in declaring and removing the Applicant as Prime Minister of Vanuatu dated the 24<sup>th</sup> April 2011 is unconstitutional and of no legal effect;
  6. An Order that the ruling of the Speaker of Parliament (First Respondent) dated 24<sup>th</sup> April 2011 removing the Hon. Sato Kilman as Prime Minister of Vanuatu was incorrect, invalid and of no legal effect;



7. An order that the ruling and decisions of the First and Second Respondent dated the 24<sup>th</sup> April in voting out the Right Hon. Sato Kilman as Prime Minister be called up and quashed in its entirety;
  8. Costs of and incidental to this Application.
  9. Such further or other orders, reliefs or remedy as the Court shall deem fit.
6. From the outset, what is purported to be relief 1 is misconceived. A relief is a remedy which is enforceable. What is sought in relief 1 is not a remedy at all. I treat it as counsel's mistake as it constitutes the main issue in this case which should be in the counsel's submissions and be part of the Court's view in the Judgment of the Court.
7. The Application is supported by the sworn statement of the following deponents:
- (i) Meltek Sato Kilman Livtunavanu, filed 27 April 2011;
  - (ii) Moana Carcasses Kalosil filed 27 April 2011; and
  - (iii) Ralph Regenvanu filed 27 April 2011.
8. The First Respondent, Speaker of Parliament, files a Response on 29<sup>th</sup> April 2011. His Response to the Applicant's constitutional complaint, among other matters, was that the Applicant was removed by 26 votes to 25 which was an absolute majority in the given circumstances in accord with Article 43(2) of the Constitution. Therefore, his decision in declaring and removing the Applicant as Prime Minister on 24<sup>th</sup> April 2011 is constitutional and in accord with the provisions of Article 43(2) of the Constitution and thus lawful and effective. Finally, the First Respondent says that his ruling and decision of 24<sup>th</sup> April 2011, is lawful and valid and in accord with Article 43(2) of the Constitution.
9. The First Respondent asks the Court to dismiss the Applicant's Urgent Application with costs.
10. The First Respondent, Maxime Carlot Korman, Speaker of Parliament, filed a sworn statement on 29<sup>th</sup> April 2011 in support of his response.



11. A response was filed on 29<sup>th</sup> April 2011 on behalf of the Second Respondent the Republic of Vanuatu. The Second Respondent's Response says that the Republic of Vanuatu does not admit that any provisions of the Constitution has been infringed in relation to the Applicant and asks the Court to refuse granting Orders and declarations, remedy or relief sought by the Applicant in his Further Amended Urgent Application. The Second Respondent instead asks the Court to make the following declarations:
1. The decision of the First Respondent and Second Respondent in declaring and removing the First Applicant as Prime Minister of Vanuatu dated 24<sup>th</sup> April 2011, is constitutional and effective.
  2. The Ruling of the Speaker of Parliament (First Respondent) dated 24<sup>th</sup> April 2011, removing the Hon. Sato Kilman as Prime Minister of Vanuatu is valid and has legal effect.
  3. The ruling and decisions of the First and Second Respondents dated 24<sup>th</sup> April 2011, in voting out the Right Hon. Sato Kilman as Prime Minister is confirmed.
  4. The Applicant is no longer and not the current Prime Minister of the Republic of Vanuatu but the Hon. Rialuth Serge Vohor.
  5. There is no need for an order to maintain the status quo of the Applicant.
  6. The Definition of 'Absolute Majority as stipulated in Article 43(2) of the Vanuatu Constitution means the majority or greater number of votes cast in support of a motion.
  7. The Honourable Speaker did not err in his determination as to 'Absolute Majority'.
  8. The Applicant pays the costs of and incidental to this Application.
  9. Such further or other orders, reliefs or remedy as the Court shall deem fit.
12. Again as I mention earlier, if any declaration is to be made, declaration sought in relief No.8 cannot be made as it is not a relief or remedy.
13. In this case, parties and counsel agree that the facts are not in dispute. They are set out in the written submissions of counsel for the Applicant. They are as follows:



- (i) On 21<sup>st</sup> April 2011, Parliament was convened in its First Extraordinary Session by the First Respondent Speaker at the Request of the majority of the Members of Parliament to debate a Motion of no confidence against the Applicant, then Prime Minister.
- (ii) On 21<sup>st</sup> April, Parliament was convened but it has not met the required quorum to conduct its business. The Speaker adjourned the Extraordinary Session of Parliament to three (3) days later i.e. 24 April 2011 in accordance with Article 21(4) of the Constitution and Standing Orders of Parliament.
- (iii) On 24<sup>th</sup> April 2011, 49 Members of Parliament were present and three (3) members arrived late.
- (iv) The Speaker ruled that 49 members present formed a quorum to proceed with the agenda. The Item of the Agenda was the Motion of no confidence against the Applicant, Sato Kilman, then Prime Minister.
- (v) The Motion of no confidence was moved against the Applicant. 26 members voted in favour of the Motion of no confidence and 25 voted against.
- (vi) A total of 52 members were present when the Motion of no confidence was moved but only 51 members voted. After the Motion of no confidence was voted by 26 members, the First Respondent, Speaker of Parliament declared that the Motion of no confidence against the Applicant was carried.
- (vii) Member Moana Carcasses Kalosil objected to the ruling of the Speaker and read the provisions of Article 43(2) of the Constitution and asked the Speaker to clarify whether 26 votes was in line with the requirement of absolute majority under Article 43(2) of the Constitution.
- (viii) The First Respondent responded and said to the effect that 26 is an absolute majority and is constitutionally valid and legal.
- (ix) The First Respondent then declared an adjournment of Parliament for 50 minutes.
- (x) The Applicant and 24 other Members of Parliament conveyed to the First Respondent Speaker that they disagree with the Speaker's



ruling. The Applicant and 24 other Members refused to go in Parliament after the 50 minutes break.

- (xi) After the break, 27 Members of Parliament (including the Speaker) resumed its sitting and elected a new Prime Minister, namely, Serge Vohor Rialuth, pursuant to Schedule 2 of Article 41 of the Constitution.

14. Before I consider the arguments and submissions of counsel of the respective parties, I wish to emphasize that this Court in considering those is not interested in or moved by the positions, personalities, or politics (if any) involved in the circumstances that gave rise to this case. This Court is also aware of the Constitutional separation of the various functions and powers of the State between the Legislature, Executive and Judiciary which concept has been jealousy guarded and maintained over many years. It is a role of the Court to ensure that an appropriate separation of powers is maintained and this at all times.
15. It is not the Court's intention in deciding this matter to interfere with the sovereignty or independence of Parliament in the conduct of its internal affairs as Parliament is entitled to act pursuant to the Constitution; nor does the Court presume to judge the desirability or efficacy of the established parliamentary "practices and procedures" that form an integral part of that conduct.
16. In this regard I would reiterate what the Supreme Court on many occasions and the Court of Appeal say. The case of **Tari v. Natapei** [2001] VUCA 18, Civil Case No.11 of 2001 (1 November 2001) is an illustration of the position:

*"The Republic of Vanuatu is a Constitutional Parliamentary Democracy. The Constitution is the foundation document. As clause 2 of its notes, the Constitution is the Supreme law of the Republic of Vanuatu.*

*In Chapter 4 the Constitution provides for a Parliament. In Clauses 16, 17, 21, 22 and 27 in particular, are enumerated the important place of Parliament, and the rights and immunities which are attached to it and its members.*



*Where there is room for debate, or it is possible that ambiguity exists, assistance may be gained from a consideration of the way in which Parliaments in other places have operated in the past or operate now. But any of that is in all circumstances and at all times subject to the clear and unambiguous words of the Constitution which is the Supreme Law."*

17. And later, in dealing with the status of the Standing Orders of Parliament, the Court said:

*"Standing Orders of Parliament, as the Constitution notes, are the rules of procedure of Parliament. Within Parliament they are supreme and must be strictly adhered to by all Members of Parliament. Nothing in the Standing Orders of Parliament can vary, abdicate or interfere with the rights which are provided under the Constitution.*

*In as much as the Standing Orders of Parliament have an effect and influence upon the constitutional rights of all members of Parliament, in accordance with Clause 6 of the Constitution any person aggrieved, is at liberty to apply to the Supreme Court... The Constitution does not provide that what happens in Parliament is to be treated differently than any other breaches of lawful rights guaranteed by the Constitution.*

*It necessarily follows therefore that the Supreme Court is the body which under the Constitution is charged with determining whether rights have been infringed or responsibilities disregarded.*

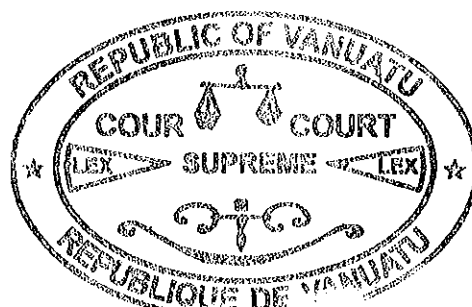
*To do that is not an interference with the sovereignty of Parliament or with the important immunity which is provided to members of Parliament. It is a necessary consequence of ensuring that all constitutional rights are accorded the meaning and force which the Constitution itself anticipated.*

*This appeal was first advanced on the basis that what is done in Parliament could never be looked at by the Court. That argument is in error... The*



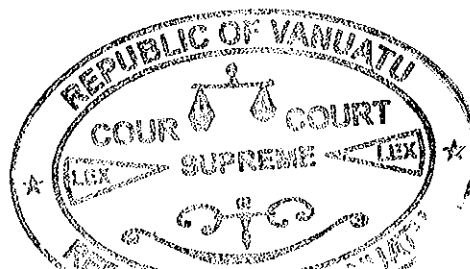
*supremacy of the Constitution in this Republic necessitates that in the extreme situation where there is an undisputed breach of legal responsibility, including the misinterpretation of the clear words of the Standing Orders of Parliament leading to a failure to recognize fundamental rights, the Court must be available to provide the remedy which the Constitution promises."*

18. In the present case, counsel for the Applicant advanced the Applicant's main contention and submitted that a Prime Minister of the Republic can only be removed by an absolute majority of the Members of Parliament as required by Article 43(2) of the Constitution.
19. He argues that the majority provided under Article 21(3), (4) of the Constitution do not apply to a removal of a Prime Minister by a Motion of no confidence. Article 43(2) is the only relevant Article which provides for an absolute majority to remove the Applicant, as the Prime Minister.
20. He finally submitted that 26 Members votes for the removal of the Applicant on 24 April 2011, does not constitute an absolute majority pursuant to Article 43(2) of the Constitution.
21. He further says that the current Parliament has a total of 52 Members of Parliament. An absolute majority of the total members of 52 should be 27 and not 26 votes. This submission is advanced on the basis that to his understanding, an absolute majority means at least one of the half plus one. He concluded that 26 votes is just half of the total numbers of the current Parliament.
22. He submitted therefore that when the First Respondent Speaker declared that the Motion of no confidence was carried by 26 votes, the First Respondent Speaker was in error and the declaration was unconstitutional and affect the rights of the Applicants of the protection of the law under Article 5(1)(d) and the Applicant's right under Article 39(1) of the Constitution.





23. Counsel for the First Respondent submitted in response that the words “absolute majority” under Article 43(2) of the Constitution is not defined. So to interpret those words, the Court must consider other provisions of the Constitution. Counsel submitted and referred to the provisions of Articles 21(3); Schedule 2 of Article 41.
24. He says Article 21(3) of the Constitution talked about a simple majority and this is the crunch of power of Parliament to remove a Prime Minister or to elect a Prime Minister. He further says that absolute majority is not qualified and it will depend on the floor of Parliament.
25. He invited the Court to note that the sitting of Parliament on 24 April 2011 was a sitting that Parliament was adjourned as there was no quorum on 21 April 2011.
26. He finally submitted that the passing of Motion of no confidence against the Applicant carried by 26 votes was made by an absolute majority in accordance with Article 43(2) of Members of Parliament present and voted on the floor of Parliament on 24 April 2011. That is his definition in relation to the words “absolute majority”.
27. As to the challenge of the newly elected Prime Minister, he submitted there is no legal challenge, leading to his election by Parliament on 24 April 2011.
28. Counsel for the Second Respondent made submissions on similar bases as those submitted by counsel for the First Respondent. He added that the definition of “absolute majority” as stipulated in Article 43(2) of the Constitution means the majority or greater number of votes cast in support of a motion.
29. He draws the Court’s attention to the circumstances that on 24 April 2011, 52 Members of Parliament were present when Parliament debated the Motion of no confidence against the Applicant. This includes the First Respondent Speaker of Parliament. However, out of 52 Members present, only 51 Members voted. The First Respondent did not vote. Out of 51 members who



voted, 26 voted for the motion. It is an absolute majority of the members who voted for the motion and it is within the meaning of Article 43(2) of the Constitution.

30. WHAT FOLLOWS ARE THE RELEVANT CONSTITUTIONAL PROVISIONS:

**"CHAPTER 1**

**THE STATE AND SOVEREIGNTY**

**REPUBLIC OF VANUATU**

1. *The Republic of Vanuatu is a sovereign democratic state.*

**CONSTITUTION SUPREME LAW**

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

...

**NATIONAL SOVEREIGN, THE ELECTORAL FRANCHISE AND POLITICAL PARTIES**

4.(1) *National sovereignty belongs to the people of Vanuatu which they exercise through their elected representatives.*

(3) *Political parties may be formed freely and may contest elections. They shall respect the Constitution and the principles of democracy."*

**"CHAPTER 2**

**FUNDAMENTAL RIGHTS AND DUTIES**

**PART 1 - Fundamental Rights**

**FUNDAMENTAL RIGHTS AND FREEDOM OF THE INDIVIDUAL**

5.(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 individual without 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;"*

**"ENFORCEMENT OF FUNDAMENTAL RIGHTS**

6.(1) *Anyone who considers that any of the rights guaranteed to him by the Constitution has been, is being or 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."*

## **"CHAPTER 4 PARLIAMENT**

### **PARLIAMENT**

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

### **POWERS TO MAKE LAWS**

*"16.(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.*

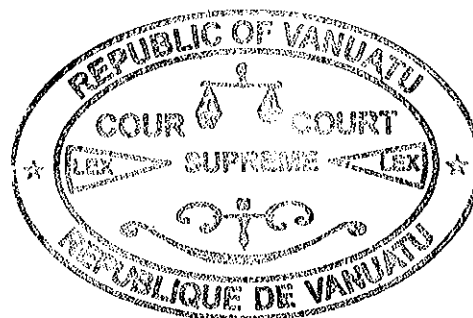
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### **"ELECTION OF MEMBERS OF PARLIAMENT**

- 17.(1) *Parliament shall consist of members elected on the basis of universal franchise through an electoral system which includes an element of proportional representation so as to ensure faire representation of different political groups and opinions."*

### **"PROCEDURE OF PARLIAMENT**

- 21.(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.*

*..."*

**"PROCEEDINGS TO BE PUBLIC**

*24. Unless otherwise provided proceedings of Parliament shall be held in public."*

**"LIFE OF PARLIAMENT**

*28.(1) Parliament, unless sooner dissolved under paragraph (2) or (3), shall continue for 4 years from the date of its election.*

*(2) Parliament may at any time decide, by resolution supported by the votes of an absolute majority of the members at a special sitting when at least three-fourths of the members are present, to dissolve Parliament. At least 1 week's notice of such a motion shall be given to the Speaker before the debate and the vote on it."*

**"CHAPTER 7**

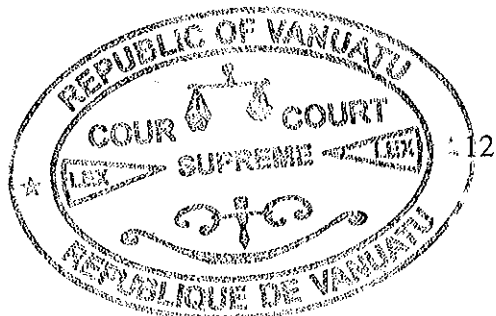
**THE EXECUTIVE**

**EXECUTIVE POWER**

*39.(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."*

**"COUNCIL OF MINISTERS**

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



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### **"ELECTION OF PRIME MINISTER**

41. *The Prime Minister shall be elected by Parliament from among its members by secret ballot in accordance with the roles in Schedule 2.*

### **"COLLECTIVE RESPONSIBILITY OF MINISTERS AND VOTES OF NO CONFIDENCE**

43.(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."*

## **"CHAPTER 8 JUSTICE**

### **THE JUDICIARY**

47.(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."*

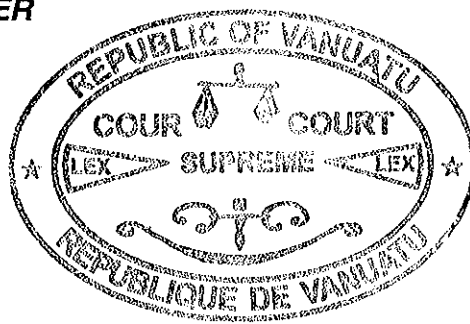
### **"APPLICATION TO SUPREME COURT REGARDING INFRINGEMENTS OF CONSTITUTION**

53.(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.*

..."

## **"SCHEDULE 2**

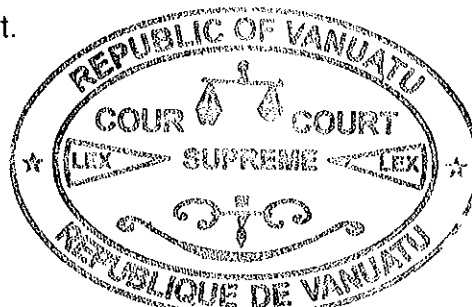
### **ELECTION OF THE PRIME MINISTER**



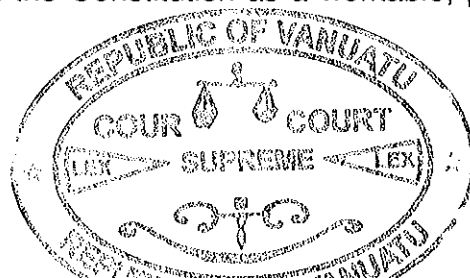
1. *The candidate who obtains the support of the absolute majority of the members of Parliament shall be elected Prime Minister.*
2. *If no candidate is elected under paragraph 1, a second ballot shall be taken but the candidate obtaining the lowest number of votes in the first ballot shall be eliminated.*
3. *If on the second ballot no candidate obtains the support specified in paragraph 1, further ballots shall be held, each time eliminating the candidate with the lowest vote in the preceding ballot until one candidate receives the support specified in paragraph 1, or if only two candidates remain the support of a simple majority.”*

### **COURT CONSIDERATIONS**

31. Before I say anything on the words “absolute majority”, within the meaning of Article 43(2) of the Constitution, I remind myself that the central feature of the structure of government under the Constitution of the Republic of Vanuatu is majority rule. This means that the executive branch of the Government is collectively responsible before Parliament and is subject to the control of Parliament with its corollary constitutional process set under Article 28(2), (3) of the Constitution (power of the President to dissolve Parliament). A Prime Minister under the Constitution of Vanuatu, is elected by Parliament (Article 41) and he is removed by Parliament (Article 43(2)).
32. Article 43(2) of the Constitution provides:  
*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.” [Emphasis added]*
33. It is the contention of the Applicant that the meaning to be given to “absolute majority” under Article 43(2) is “at least one of the half plus one” which is 27 of the total of 52 Members of Parliament.

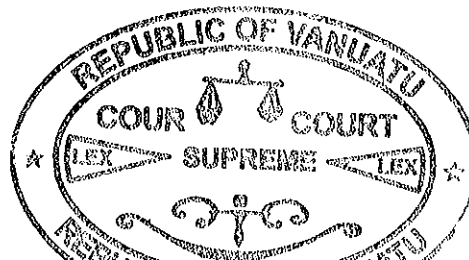


34. If that contention is right, then, it must be intended by the Constitutional framers in the interest of stable government which requires an overall or "absolute" majority which means "one over all rivals combined. This is consistent with all Vanuatu judgments referred to by counsel for the Applicant on the point.
35. The present case illustrates the context of a dispute when the votes are close to evenly divided numbers. Parliament consists of 52 members which is an even number of members. If 26 members voted for the motion of no confidence, and 26 others voted against the motion, the motion is not passed by a majority of the Members of Parliament within the meaning of Article 43(2) of the Constitution. If the motion receives at least one half plus one, it receives a majority of the members of Parliament. Again this is what the constitutional framers intended in the interest of stable governments.
36. It is clear that the Constitution did not intend this type of dispute before Parliament on 24 April 2011 to come before the Courts at all. One can only note that because of the time factors which are necessarily involved, and which litigants can play a part in protracting, necessarily created an atmosphere of instability in the Parliament and the Executive Government. In such context, the interpretation of the Applicant of the "absolute majority of the Members of Parliament" cannot assist in the context before Parliament on 24 April 2011 for the following reasons:
37. First, any instability which may occur before, after or during a debate of a motion of no confidence against a Prime Minister will result in the Prime Ministership to be in the hands of the Parliament as the Constitution intends it to be.
38. Second, the context requires that the application of an interpretation other than that of the Applicant must be considered. This is in line with the established practice for the Courts when interpreting questions of law concerning the Constitution, to treat the Constitution as a workable, practical



and operable document. In the present case, there is no need for me to go through a lengthy process of interpretation as I have identified the words used in Article 28(2) of the Constitution which offered a solution to the current political impasse. The following words are used in Article 28(2) of the Constitution: "the votes of an absolute majority of the members present". What constitutes an absolute majority as interpreted by the Applicant can only be determined by reference to the number representing "all members" of Parliament. This cannot apply in the context of the dispute before Parliament on 24 April 2011 when the motion of no confidence against the Applicant, then Prime Minister was voted by Parliament.

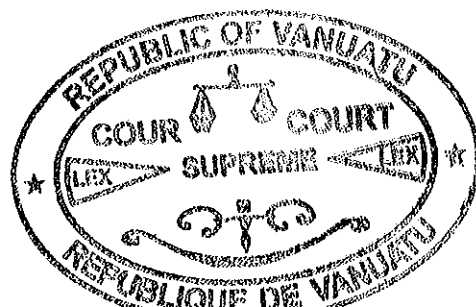
39. In such situation similar words used with similar effect in other provisions of the Constitution will be used. "Votes of an absolute majority of the members present" in Article 28(2) are relevant, workable and practical and of similar effect. They show that the number of votes required must be determined by reference to the number of votes cast and not the numbers of members of Parliament. The expression used in Article 28(2) will be applied in the present case.
40. If the Applicant's interpretation is correct, then, it could result in a government without a majority in office for a long period when it no longer had popular support. The result could be that the mechanism provided by the Constitution for the removal of a government may become inoperative, and even a government which does not have the confidence of the Parliament may continue in an unchallenged position for many months. Such conclusion would be quite unsatisfactory and inconsistent with the principles of majority rule in a Parliamentary democracy. It is therefore, the duty of the Court to interpret the Constitution in a way which advances rather than impedes the principles of majority Government. That is what is reflected in the interpretation given by applying the expression used in Article 28(2) of the Constitution.
41. In the present case, on 24 April 2011, 52 Members of Parliament were present in Parliament and debated the Motion of no confidence against the Applicant, as then, Prime Minister. A total of 51 Members of Parliament voted. 26 voted





for and 25 voted against. 1 Member of Parliament, namely the First Respondent Speaker of Parliament did not vote. 26 votes constitute an absolute majority of the 51 voting members present within the meaning of the words used in Article 28(2) of the Constitution which is applied in the context of dispute before Parliament on 24 April 2011.

42. On a general final note, in an even number of members, any majority will be an absolute majority within the ordinary and natural meaning of that phrase and indeed more.
43. The Applicant intended also to challenge the election of the new Prime Minister which was elected by Parliament on 24 April 2011 after the Applicant's removal by Parliament.
44. It is difficult to understand on what basis the challenge could be advanced. The facts simply show that after the break of 50 minutes, the Applicant himself and 24 other members decided not to go back into Parliament to participate in the other business of Parliament, namely the election of a Prime Minister. There is no constitutional basis advanced for such a contention and it is rejected as baseless.
45. I wish to express my thanks to counsel for their submissions and their assistance in the supply of Vanuatu and regional authorities on the issue before the Court. I am persuaded by two (2) judgments of the Court of Appeal of the Solomon Islands, namely:
- **Governor-General v. Mamaloni; Mamaloni v. Attorney-General & the Governor-General** [1993] SBCA 1; CA – CAC 001 & 003 of 1993 (5 November 1993); and
  - **Billy Hilly & Others v. Pitakaka & Another** [1994] (Civil Appeal Case No.299 of 1994 (22 October 1994).
46. On the bases of these considerations, the Applicant's Further Amended Urgent Constitutional Application is dismissed and the following declarations are made:



## **DECLARATIONS/ORDERS**

1. The decision of the First Respondent and Second Respondent in declaring and removing the Applicant as Prime Minister of Vanuatu dated 24<sup>th</sup> April 2011, is constitutional and effective.
2. The Ruling of the Speaker of Parliament (First Respondent) dated 24<sup>th</sup> April 2011, removing the Hon. Sato Kilman as Prime Minister of Vanuatu is valid and has legal effect.
3. The ruling and decisions of the First and Second Respondents dated 24<sup>th</sup> April 2011, in voting out the Right Hon. Sato Kilman as Prime Minister is confirmed.
4. The Applicant is no longer and cannot maintain that he is still the Prime Minister of the Republic of Vanuatu as a new Prime Minister was elected by Parliament on 24 April 2011.
5. There is no need for an order to maintain the status quo of the Applicant.
6. There is no need to make a declaration as to what is the definition of "Absolute Majority" under Article 43(2) of the Constitution as any is part of the Judgment itself.
7. The Honourable Speaker did not err in his determination as to 'Absolute Majority'.
8. The Applicant pays the costs of and incidental to this Application and such costs shall be agreed or determined.

**DATED at Port-Vila this 30<sup>th</sup> day of April 2011**

**BY THE COURT**

**Vincent LUNABEK  
Chief Justice**

