

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Civil Jurisdiction)

Constitutional Case No.01 of 2011

**IN THE MATTER OF: ARTICLES 53(1)(2) AND ARTICLES 21(2) OF
THE CONSTITUTION AND ORDER 14 OF
THE STANDING ORDER OF PARLIAMENT**

**BETWEEN: HON. SATO KILMAN - Prime Minister
HON. HAM LINI VANUARORO - Deputy Prime
Minister, HON ALFRED CARLOT - MP for
Efate Rural, HON. HARRY IAUKO - MP for
Tanna, HON. DONNA BROWNY - MP for
Malekula, HON. JAMES BULE - MP for
Ambae, HON. DON KEN - MP for Malekula,
HON. DUNSTAN HILTON – MP for Banks,
HON. MOANA KALOSIL – MP for Port Vila,
HON. DANIEL TOARA – MP for Shepherds,
HON. MARCELLINO PIPITE – MP for Santo
Rural, HON.SAMSEN SAMSON – MP for
Santo Rural, HON. GEORGE WELLS – MP for
Luganville, HON. DAVID TOSUL – MP for
Pentecost, HON. PHILIP CHARLIE – MP for
Tafea Outer Islands, HON. MOKING
STEVENS – MP for Tafea, HON. ESMON
SIMON – MP for Malekula, HON. HAVO MOLI
– MP for Malo, HON. RALPH REGANVANU –
MP for Port Vila, HON. LOUIS ETAP – MP for
Tanna, HON. ISAAC HAMARILIU – MP for
Epi, HON. WILLIE LOP – MP for Tanna, HON.
JEAN RAVO – MP for Santo Rural, HON.
JAMES NGWANGO – MP for Ambae and
HON. DAVID ARIASUA – MP for Paama**

Applicants

*Counsel: Mr George Boar of Boar Law, Port
Vila*

AND: THE REPUBLIC OF VANUATU
Respondent

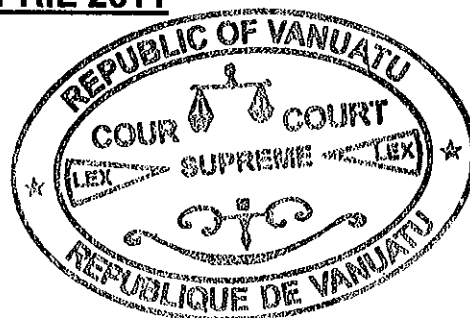
Coram: Vincent Lunabek CJ

Counsel: Mr Felix Laumae for the Applicants
Mr Ronald Warsal for the Respondent
Mr Frederick Gilu and Mr Avock Godden of SLO as friends of Court

Date of hearing: 22 and 23 April 2011

Date of decision: 24 April 2011

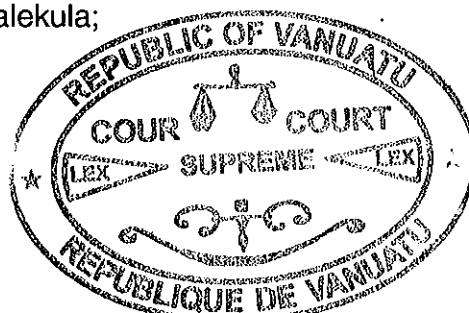
**REASONS FOR ORAL DECISION OF 24 APRIL 2011
DISMISSING AN URGENT CONSTITUTIONAL APPLICATION
DATED 23 APRIL 2011**



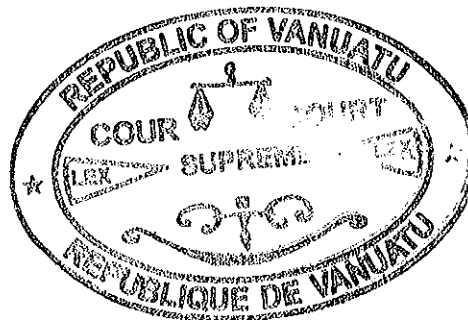
1. Before me is an Amended Urgent Application filed on 22 April 2011 by the Applicants. The Applicants are Honourable Sato Kilman, Prime Minister, Honourable Ham Lini Vanuaroroa, Deputy Prime Minister and 23 other Members of Parliament. The Applicants are in total 25 Members of Parliament.
2. On 14 April 2011, the Speaker of Parliament, Hon. Maxime Carlot Korman, summoned Parliament to meet in its 2011 Second Extraordinary Session commencing on Thursday 21 April 2011 at 8.30am o'clock in Port-Vila to debate a Motion of no confidence in the Prime Minister, Hon. Sato Kilman.
3. The Applicants challenge the constitutional validity of the Speaker's Summons for Parliament to convene its Second Extraordinary Session because the Applicants say the Request to call for an extraordinary session of Parliament was not a request of the majority of the Members of Parliament in accordance with Article 21(2) of the Constitution.
4. On 21 April 2011, Parliament met in its Second Extraordinary Session at 8.30am o'clock as summoned to debate the motion. However, only 28 Members of Parliament out of the total members of 52 were present. There was no quorum for Parliament to conduct its business in its Second Extraordinary Session. Parliament postponed its Second Extraordinary Session to 3 days later i.e. Sunday 24 April 2011 at 8.30am in accordance with the relevant provisions of the Constitution and standing Orders of Parliament.
5. On 22 April 2011, the Applicants file an Urgent Application with sworn statement as to urgency. A conference was held by the Court as a matter of urgency and because of the constitutional importance of the matters raised involving the Legislative and Executive branches of the Government of the Republic, the Constitutional Rules 2003 are abridged. After the conference, an Amended Urgent Constitutional Application was filed on 22 April 2011 and a Response to the Amended Urgent Application was also filed on 23 April 2011.



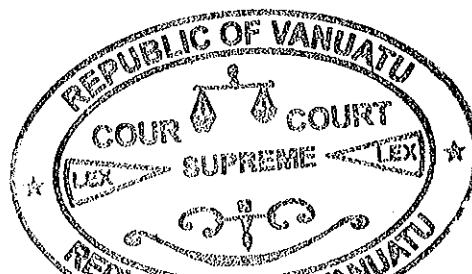
6. The hearing begins on the same date of 23 April 2011. An oral decision was made on 23 April 2011 dismissing the Amended Urgent Constitutional Application on the basis that the Request was signed by 27 Members which is the majority required under Article 21(2) of the Constitution. There were no provisions of the Constitution breached in relation to any of the Applicants. The Applicants shall pay the costs of the Respondent. Such costs to be agreed or determined.
7. The reasons of the oral decision of 24 April 2011 dismissing the Amended Urgent Constitutional Application are set out below:
8. In the Amended Urgent Constitutional Application, the Applicants apply to the Supreme Court pursuant to Article 53(1), (2) of the Constitution for the following Orders:
- A - THAT, the request by twenty six (26) Members of Parliament for calling of the Extraordinary Session of Parliament deposited with the Speaker of Parliament on 14 April 2011 at about 11.15am does not meet the majority number of the fifty two (52) Members of Parliament as required by Article 21(2) of the Constitution.
- B - THAT, the convening of the extraordinary session of Parliament is contrary to Article 21(2) of the Constitution and therefore unconstitutional.
- C - THAT, the decision of the Hon. Speaker of Parliament, Hon. Maxime Carlot Korman, to convene Parliament on 21 April 2011 pursuant to Article 21(2) of the Constitution is void and of no effect or otherwise.
9. The Applicants file six (6) statements in support of the Amended Urgent Application deposited by the following deponents:
- Hon. Sato Kilman, Prime Minister of Vanuatu;
 - Hon. Alfred Carlot, Minister of Lands;
 - Hon. Donna Brownly, MP of Malekula;



- Yoan Mariasua, Private Secretary to the Speaker of Parliament; and
 - Mme Nadine Alatoa, Secretary to Council of Ministers.
10. A Response is filed on behalf of the Respondent Republic. The Response denies that a constitutional provision has been infringed in relation to the Applicants and so, the Court cannot interfere into the process of Parliament to April 24th, 2011 pending determination of the Application unless there is infringement of the rights of the Applicants.
11. It is said for the Respondent that the decision of the Speaker of 14 April 2011 to convene Parliament on 21 April 2011 was duly made pursuant to Article 21(2) of the Constitution given that the Request for Parliament to meet in an extraordinary to debate a motion of no confidence against the Prime Minister was duly made by the majority of the Members of Parliament which is 27.
12. The Respondent's counsel asks the Court to dismiss the Amended Urgent Constitutional Application with costs.
13. Four sworn statements are filed in support of the Response by the following Respondents:
- Hon. Maxime Carlot Korman, Speaker of Parliament;
 - Lino Bulekuli dit "Sacsac", Clerk of Parliament;
 - Hon. Edward Nipake Natapei, Leader of the Opposition; and
 - Hon. Serge Vohor Rialuth; Deputy Leader of the Opposition.
14. Evidence are provided from sworn statements and oral testimonies of deponents of the sworn statements. Most of the facts are agreed apart from the facts as to when and how Alfred Carlot signed the Request to convene an extraordinary session of Parliament.
15. From the sworn statements filed, the following factual circumstances emerge:
- 14 April 2011 – 21 April 2011 constitute the relevant period.

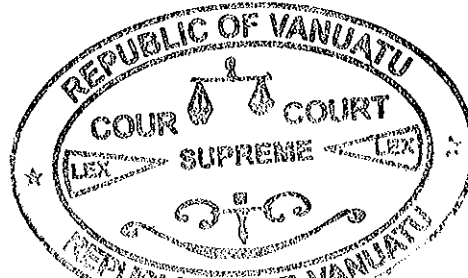


- The Request for an extraordinary session of Parliament was made bearing 27 signatures of Members of Parliament on it.
16. On 14 April 2011, between 11.00am-12.00pm o'clock Edward Natapei, Leader of Opposition in Parliament and his Deputy, Serge Vohor Rialuth attended the Office of the Speaker of Parliament and deposited a Request for the Speaker to convene Parliament in an Extraordinary Session to debate a motion of no confidence against the Prime Minister, Sato Kilman.
 17. A Notice of Motion of no confidence against the Prime Minister was signed and was in accord with the constitutional requirement and was deposited with the Request to convene Parliament in an extraordinary session which was also deposited in the Office of the Speaker on 14 April 2011 by the Leader of Opposition in Parliament and his Deputy.
 18. The purpose of the extraordinary session was to debate the motion of no confidence against the Prime Minister, Sato Kilman.
 19. Mariasua, the private secretary of the Speaker of Parliament and another received a phone call for a meeting between the Speaker and Mr Edward Natapei and Serge Vohor Rialuth and they returned to Parliament building after the phone call.
 20. At their arrival, Edward Natapei and Serge Vohor Rialuth were having their meeting with the Speaker at the Speaker's Office.
 21. On 14 April 2011, between 12.00pm-1.00pm o'clock the Speaker had a meeting with Alfred Carlot, a Member of Parliament who was affiliated with Vanuatu Republican Party (V.R.P.), a political party to which the Speaker of Parliament, Maxime Carlot Korman, was its president.
 22. Mr Alfred Carlot attended the Office of the Speaker of Parliament at the request of the Speaker after he attended a Council of Ministers' meeting on



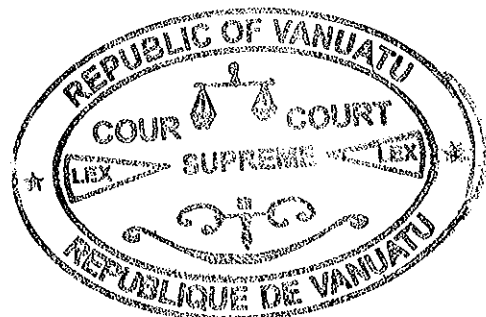
same date of 14 April 2011 as Mr Alfred Carlot was also the Minister of Lands under the Sato Kilman's Prime Ministership.

23. At that meeting between the Speaker and Mr Alfred Carlot, they had discussions of political nature, and among other matters, they had discussions about the request to convene Parliament in an extraordinary session, the motion of no confidence against the Prime Minister and the position of Vanuatu Republican Party in relation to the motion of no confidence.
24. On 14 April 2011, at about 3.30pm, the Speaker of Parliament advised the following persons:
- Clerk of Parliament, Lino Bulekuli dit Sacsac;
 - First Political Advisor to Speaker, Selwyn Leodoro; and
 - Yoan Mariasua, Private Secretary to the Speaker;
- that he has received a Request for an extraordinary session of Parliament deposed by Edwar Natapei, the Leader of Opposition and the Deputy Leader of Opposition, Mr Serge Vohor Rialuth.
25. The Speaker requested that the Clerk of Parliament checked whether the Request deposed by the Leader of Opposition and his Deputy for an extraordinary session of Parliament complied with Article 21(2) of the Constitution and Rule 14(1) of the Standing Orders of Parliament.
26. The Clerk checked the Request and was satisfied that the Request for an extraordinary session of Parliament was signed by 27 Members of Parliament. The Clerk then advised the Speaker of Parliament of the lawfulness and validity of the Request to the Speaker.
27. The Speaker then advised the Clerk of Parliament to issue the notices and summons for Sitting of Parliament to be convened at 8.30am o'clock April 21st, 2011. A true copy of the Notice and Summons issued by the Clerk and the Speaker of Parliament on 14 April 2011, for Parliament to convene at 8.30am April 21st, 2011 were attached to the sworn statement of the Clerk of

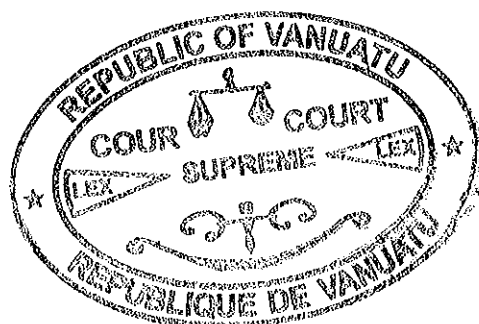


Parliament, Mr Lino Bulekuli Dit Sacsac filed 23 April 2011 and the statement of the Speaker of Parliament filed on the same date.

28. On 21st April 2011 at 8.30am o'clock, Parliament was convened for an extraordinary session to debate a motion of no confidence against the Prime Minister, Sato Kilman. However, Parliament did not have the required two third majority quorum. The extraordinary session of Parliament was adjourned 3 days later to Sunday 24th April 2011 in accordance with the relevant provisions of the Constitution and the Standing Orders of Parliament.
29. On 22nd April 2011, the Applicants filed an Urgent Constitutional Application which was then amended and which is the subject of this case.
30. On the disputed versions of facts, the Court accepts the evidence of Maxime Carlot Korman that on 14 April 2011, when he receives the Request for Parliament to meet in an extraordinary session, there were 27 signatures including that of Mr Alfred Carlot which were in support of the Request. The Court accepts the evidence of Mr Korman that the signature of Mr Alfred Carlot was on the Request before he met Mr Alfred Carlot in his office on 14 April 2011.
31. The evidence of Mr Korman was supported by the evidence of Mr Edward Natapei and that of Rialuth Serge Vohor who lodged the Request at the Office of the Speaker, where there were already 27 signatures on the Request including the signature of Mr Alfred Carlot.
32. Relevantly at 3.30pm on 14 April 2011, when the Notice and Summons to convene Parliament for an extraordinary session to debate a motion of no confidence against the Prime Minister, Sato Kilman, were issued, there were 27 signatures on the Request in accordance with Article 21(2) of the Constitution and Article 14(1) of the Standing Orders of Parliament. This is confirmed by the evidence of Clerk.



33. The Court rejected the version of facts advanced by Mr Alfred Carlot that he was forced to sign the Request by the Speaker on 14 April 2011. There was no evidence of such a force of any kind on the person of Mr Alfred Carlot apart from discussions of political nature of some sort between Mr Korman and Mr Alfred Carlot which will have consequences on Mr Alfred Carlot and his political party, (V.R.P.) when Mr Korman asked Alfred Carlot to resign as a Minister of the Government and to terminate his staff as the Vanuatu Republican Party support the motion. The evidence of the Respondent was further supported by the following action or conduct of Mr Alfred Carlot:
- He signed the Request for an extraordinary session of Parliament.
 - He resigned as a Minister of State responsible for Lands on 14 April 2011 and joined the opposition group at the location or place they were staying (Devils Point).
 - He felt guilty of his actions and performed custom reconciliation to the Prime Minister, Sato Kilman.
 - On 15 April 2011, he withdrew his signature from the motion of no confidence against the Prime Minister, Sato Kilman, although, Mr Alfred Carlot testified he never signed one (any motion of no confidence). Mr Alfred Carlot contradicted himself. His evidence is rejected.
34. The facts are conclusive that on 14 April 2011 at 3.30pm o'clock when the Speaker of Parliament summoned Parliament to meet in an extraordinary session of Parliament, the Request was supported by 27 Members of Parliament which was the required majority within Article 21(2) of the Constitution and Rule 14(1) of the Standing Orders of Parliament. On 14 April 2011 at 3.30pm, the Speaker of Parliament was satisfied of that fact before he advised the Clerk of Parliament to issue the Notice and Summons to all Members of Parliament to convene an extraordinary session of Parliament on 21st April 2011 at 8.30am o'clock to debate the motion of no confidence against the Prime Minister, Sato Kilman. There was no provision of the Constitution which was infringed in relation to the Applicants.



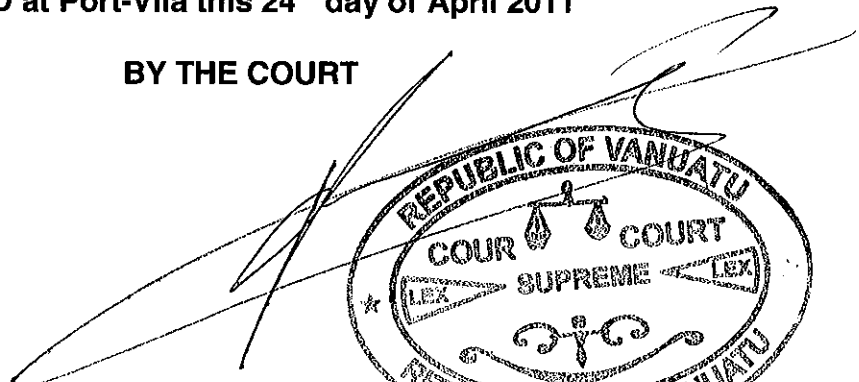
35. Those are the reasons of the dismissal of the Amended Urgent Constitutional Application filed 22 April 2011.
36. The formal Orders of the Court are:

ORDERS

1. The Amended Urgent Constitutional Application filed 22 April 2011, is dismissed.
2. The Respondent is entitled to its costs against the Applicants and such costs are to be agreed or determined.

DATED at Port-Vila this 24th day of April 2011

BY THE COURT


Vincent LUNABEK
Chief Justice

