

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

CIVIL CASE No.64 OF 2010

- BETWEEN:** HONOURABLE NIPAKE EDWARD NATAPEI
MP, President of the Vanuaaku Pati of Port Vila,
Vanuatu
First Claimant
- AND:** HONOURABLE NIPAKE EDWARD
NATAPEI, MP, JOE NATUMAN, MP, and 26
others
Second Claimants
- AND:** HONOURABLE HARRY IAUKO MP, C/- of
Port Vila, Efate, Republic of Vanuatu
First Defendant
- AND:** MANUA IAIOFA and 29 others
Second Defendants

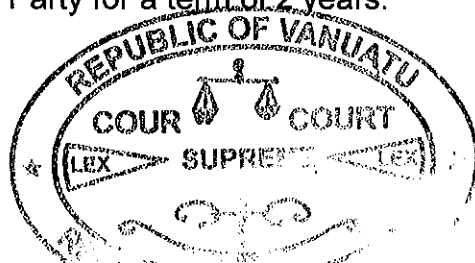
Coram: Chief Justice V. Lunabek

Counsel: Mr Edward Nalyal for the Claimants
Mr Silas Hakwa for the Defendants

**REASONS FOR ORAL RULING
ON PRELIMINARY QUESTION
ISSUED ON 6 JULY 2012**

BACKGROUND

By an Amended Supreme Court Claim filed 11 February 2011, the First and Second claimants seek various declarations and orders against the First and Second Defendants. The Claimants and the Defendants were all Members of a Political Party, namely, the Vanuaaku Pati (VP). At the VP 36th Congress held at Ifira Tenuku, from 26-30 August 2007 where the Claimants and the Defendants attended and participated in the Congress, the Claimants were elected by that Congress as members of the Executive Council (EC) of the Party for a term of 2 years.



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During the discussions which took place between counsel and the Court in the conference on 10 May 2012, the following preliminary issue was identified as the way forward in the resolution of this proceeding:

PRELIMINARY ISSUE

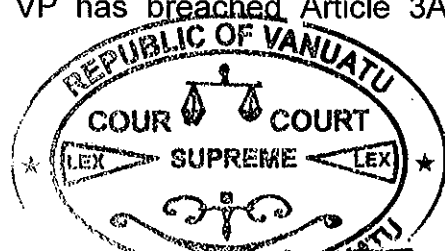
"If the term of the Executive Council hereinafter referred to as "EC" expires, does the EC continue to have a mandate?"

It is noted that this issue was raised by Mr Hakwa on behalf of his clients (First and Second Defendants) in previous court proceedings involving the same parties or some of them in Civil Case No.11 of 2010 and Civil Case No.42 of 2010. It is important from the outset that an answer be given to it as it is an important question within the VP Constitution and its members. It is also important because the resolution of this preliminary question may substantively advance the resolution of this proceeding case or resolve it albeit one or two factual issues in the proceedings.

AGREED FACTS

The parties agreed on the following facts and the Court directed counsel to file submissions on the question as identified:

1. The Vanuaaku Pati ("VP") held its 36th Congress on Ifira Tenuku on 26-30 August 2007.
2. The VP made resolutions at Ifira Congress in line with the Constitution of the VP ("the Constitution").
3. The Ifira Congress elected members of the Executive Council of VP ("the Council") for a term of two (2) years.
4. The Ifira Congress resolved that the venue of the next Congress in 2008 will be on Tongoa and that the Council will decide the actual date and time of the Congress.
5. In 2008 and 2009 there was no VP Congress organised by the Council.
6. The Claimants in Supreme Court Civil Case No.11 of 2010 filed their Claim in the Supreme Court.
7. On 5 February 2010 the Supreme Court made Orders in Civil Case No.11 of 2010 (amongst other things) that the VP has breached Article 3A(i) of its



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Constitution, that a Party Congress must be held in accordance with Article 3(A)(i) of the Constitution, that such Congress will be held on 02 April 2010 on the Island of Tongoa, Shefa Province and that the Council shall take all necessary steps and arrangements to ensure that the VP 37th Congress is held on 02 April 2010 on the Island of Tongoa, Shefa Province.

8. The VP Congress is the supreme decision-making body of VP.

VP CONSTITUTION (RELEVANT ARTICLES)

Both counsel make submissions and referred to the Articles of the VP Constitution.

The VP as a political Party is founded in August 1971 with a very detailed Constitution. The VP Constitution as its founding document sets up, among other matters, the VP aims, its ruling bodies comprising of the Congress, the Commissars Council, the sub-committees and the Executive Council), its Secretariat and party officers including Membership, its Accounts and Audits and its rules for Administration.

The VP Constitution provides also for the manner as to how to interpret the Constitution of the Party and how it is to be amended. The congress is the supreme body of the Party. Only the Congress can modify, change, suspend or cancel a decision of Congress and only the Congress can change the Constitution of the Party.

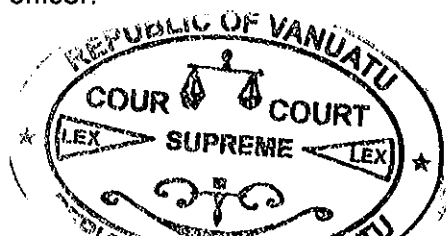
The relevant Articles of VP Constitution are set out below for ease of reference.

“3. RULING BODIES

A) CONGRESS ESTABLISHMENT

The Party shall have a "Congress" which shall meet at least once a year

- (i) The Congress shall be made up of the following people
 - (1) Sub-committee delegates and
 - (2) Island delegates if there are no sub-committees on those particular islands; and
 - (3) Delegates representing a group of islands if there are no sub-committees on those particular groups of islands; -
 - (4) Members of the Commissars' Council; and
 - (5) Members of the Executive Council.
- (ii) Congress delegates shall be chosen as follows:
 - (1) Sub-Committee delegates shall be chosen by the sub-committees and he or she must be a sub-committee officer;



- (2) An island delegate where there *is* no sub-committee, shall be chosen by the Party supporters on that island; and
 - (3) A delegate representing a group of islands where there is no sub-Committee, shall be chosen by the Party supporters on those islands.
- (iii) A delegate chosen to represent a sub-committee, an island or group of islands can be accompanied to and in the congress by a small number of advisors.
 - (iv) There is no limit to the number of Party Congresses a delegate can attend.

PURPOSE

- (v) The purpose of the congress is to ensure the good administration of Party affairs and to work for the welfare of Party members, the community and the nation as a whole view of the aims of the Party.

AUTRORITY

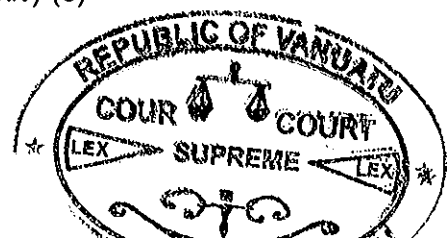
- (vi) The congress is the supreme decision making body of the Party
- (vii) A decision of Congress can be modified, changed, suspended or cancelled only by another decision of Congress.
- (viii) Congress is the only body competent to change the constitution of the Party.

PROCEEDINGS

- (ix) The President of the Party shall be the President of the Congress.
- (x) Every Congress, shall be opened by the President of the Party. The President may delegate this power to a senior officer of the Party where he is unable to be present.
- (xi) The Vice President of the Party shall be the Chairperson of the congress and in that capacity shall be responsible for the good conduct and running of the Congress. The Chairperson may delegate this work.

QUORUM

- (xii) A congress cannot proceed as a properly Constituted Congress unless a quorum of its members are present at the opening of the congress.
- (xiii) The quorum for a Congress to open is the presence of:
 - (1) The Party President in person: or
 - (2) The Vice-president in person: and
 - (3) Half plus one of the total possible voting delegates that may attend the congress: and at
 - (4) At least half of the members of the Executive Council and
 - (5) The voting, delegate of the Executive Council and the voting delegate of the Commissars' Council must be part of the 'half plus one' of all delegates mentioned in section (a) (xiv) (3)



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- (xiv) For the purposes of point (xiv) (3) under this sub-heading ("Quorum") the Executive council and the Commissars Council shall separately choose one representative each who shall be their respective "voting delegate".

VOTING

- (xv) Every Sub-Committee of the Party is entitled to one vote at congress. A sub-committee is a sub-committee as described in this constitution:
- (xvi) Every delegate representing islands which have no subcommittees is entitled to one vote at Congress.
- (xvii) Every delegate representing a group of islands, which have no Sub-Committees, is entitled to one at Congress.
- (xviii) The Commissars' Council as a body is entitled to one vote at congress. For this purpose the Executive council shall choose a voting delegate who will exercise that vote.
- (xix) The Executive Council as a body is entitled to one vote at congress. For this purpose the Executive Council shall choose a voting delegate who will exercise that vote.

B) COMMISSARS COUNCIL
ESTABLISHMENT

- (i) The party shall have a "Commissars' Council" which shall meet from time to time

...

C) SUB-COMMITTEES
ESTABLISHMENT

- (i) The party shall have sub-Committees set up throughout the Islands of Vanuatu.

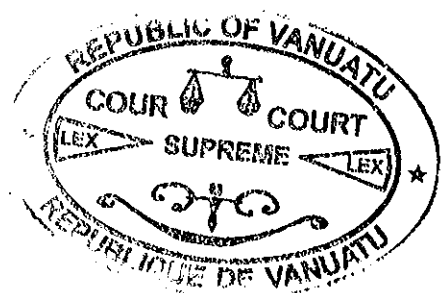
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D) EXECUTIVE COUNCIL
ESTABLISHMENT

- (i) The Party shall have an "Executive Council" which meet regularly at intervals that it shall decide itself at different times.

- ii) Subject to the provisions of paragraph (iii) and (vi), the Executive Council shall consist of not less than 20 and not more than 30 members elected by the Party Congress who shall be:

- (1) The President of the party;
- (2) The Vice-President;
- (3) The Second Vice-President;
- (4) The Secretary-General;
- (5) The Assistant Secretary-General;



- (6) The Treasurer;
 - (7) The Assistant Treasurer;
 - (8) The Co-coordinator of the Party; and
 - (9) Those other persons so elected by the Congress.
- (iii) Of those other persons elected by the congress pursuant to paragraph (ii) (9), there shall be two members representing women groups and one member representing youth groups within the Party, chiefs and Ni-Vanuatu Business.
 - (iv) **Members of the Executive Council, shall be elected by the Congress, for a term of two years and in the event that a members' term of office expires before the convening of the next congress to elect new members, that member shall continue to perform the duties and functions of a member, until new election of members are made by the Congress. [my emphasis]**
 - (v) There is no limit to the number of terms that a person can be elected an officer to the Executive Council.
 - (vi) Where the Party forms the whole of or part of the Executive government of the Republic of Vanuatu, the Executive Council may be enlarged to include the participation of Ministers and their political appointees if considered appropriate. A decision to follow this course may be made by the Commissars' Council or the Congress who shall impose conditions.
 - (vii) Where the size of the Executive Council is enlarged as mentioned in paragraph of this heading ("Executive"), the total number of people and officers making up the Executive Council shall not be more than thirty five persons.

PURPOSE

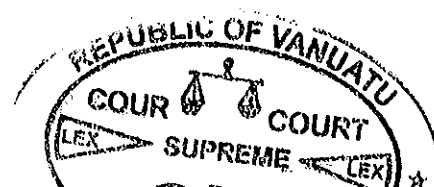
- (viii) The purpose of the Executive Council is to ensure that Congress's purpose and decisions are put into effect faithfully.

AUTHORITY

- (ix) In carrying out its purpose the Executive Council has the authority to set up working groups, working committees and to appoint officers of the Party or other persons to do specific work.
- (x) The Executive Council may make decision in respect of its purpose to the extent that those decisions do not clash with the decisions of the Congress or the Commissars' Council.

PROCEEDINGS

- (xi) The President of the Party shall be the President of the Executive Council.
- (xii) The Vice-President of the Party shall be the Chairperson of the Executive Council, and the second Vice-President of the Party shall be the Chairperson of the Executive Council, and the second Vice-President of the Party shall be the Deputy --Chairperson of the Executive Council.
- (xiii) The Chairperson of the Executive council shall be responsible for calling



A

Executive Council meetings.

- (xiv) The Chairperson of the Executive Council shall be responsible for the good running of the Executive Council.
- (xv) The Chairperson of the Executive may delegate this work under this subheading ("Proceedings") to the Deputy Chairperson or a senior officer of the Party Executive Council.
- (xvi) The Deputy Chairperson shall help the Chairperson of the Executive in carrying out work under this Sub-Heading ("Proceedings").
- (xvii) Other officers of the Executive Council shall help the Chairperson in carrying out work under this sub-heading ("Proceedings").

QUORUM

- (xviii) The quorum for the Executive Council to start a proceeding, is the presence of:
 - The Party President; or
 - The Executive Council Chairperson; or
 - The Executive Council Deputy Chairperson;And
 - At least one third of the members of the Executive Council including, President, Vice President or Deputy Vice President.
- (xix) The Executive Council shall not transact any business at any of its meetings unless a quorum is present.

VOTING

- (xx) Every officer of the Executive Council is entitled to one vote at Executive Council Proceedings.
- (xxi) Persons, who are included in the Executive Council under paragraph (vi) of this heading ("Executive Council") shall not have a Vote in the Executive Council unless decided by the Commissars' Council or the congress.
- (xxii) The Chairperson of the Executive Council or a person chairing a meeting of the executive Council is entitled to a casting vote in the council.
- (xxiii) The casting vote mentioned in the previous paragraph can be used only, by the appropriate person, when voting is equal on a matter:
- (xxiv) When the voting on a matter in the Executive Council is equal the person chairing the meeting can do three alternative things;
 - (1) Cast the casting vote in favor of any one side of the voting; or
 - (2) Order an extended discussion on the matter before another vote is taken; or
 - (3) Suspend the discussion on the matter to another meeting of the Executive Council.

RECORDS

- (xxv) The Executive Council shall keep, up to date, the following records:
- (1) The national roll book of members of the Party and other relevant documents and books necessary to compile and keep a proper national roll; and
 - (2) Proper records of minutes of all proceedings of the Executive Council; And
 - (3) Proper records of all dealings by the Executive Council; and
 - (4) Appropriate documents and books of account that show the true money situation, asset situation and property situation of the Party at the national level. (This does not necessarily refer to money, asset and property situation of Party Sub-committees); and
 - (5) Other documents or books of record that the Executive Council or the Commissar's Council or the Congress decides as suitable to be kept.
- (xxvi) The national roll book records of minutes and documents and books of account of the Executive Council may be looked at by any member of the Party.
- (xxvii) The Executive Council shall be also responsible to keep, up to date, the following records:
- (1) Proper records of minutes of proceedings of the Congressman proper records of dealings by the congress; and
 - (2) Proper records of minutes of proceedings of the Commissars' Council and proper records of dealings by the commissars' council.

SECRETARIAT

- (xxviii) The Executive Council shall be responsible for setting up and ensuring the continuity of a national headquarters which will work as the Party Secretariat.

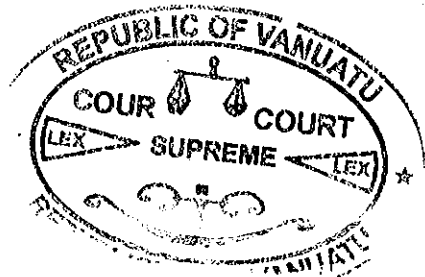
4. SECRETARIAT ESTABLISHMENT

- a. The Party shall employ such sufficient member or, persons, upon such terms and conditions as the Congress after consultation with the Executive may from time to time decide; as shall be necessary, in order to provide effective and efficient administrative management, and for the affairs of the party and for the various functions, duties and responsibilities of the various organs or bodies of the Party.

5. PARTY OFFICERS

Officers and ad HOC Officers

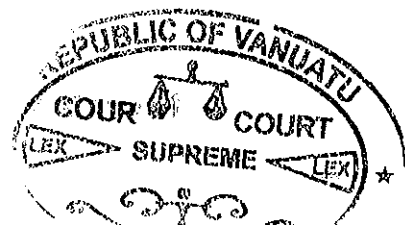
- (a) The Party shall have the following officers;
- (i) A President; and
 - (ii) A Vice-President; and



- (iii) A second Vice- President; and
 - (iv) A Secretary-General; and
 - (v) An Assistant Secretary-General; and
 - (vi) A Treasurer and;
 - (vii) An Assistant Treasurer and;
 - (viii) A First Executive Officer and;
 - (ix) A Second Executive Officer and;
 - (x) An Assistant Co-coordinating Officer and;
 - (xi) An Information Officer and;
 - (xii) An Editor of "Viewpoints".
- (b) Other persons elected by Congress to the Executive Council are also officers of the Party.
- (c) Persons included into the Executive Council under article 3(d)(vi) of the constitution shall be ad hoc officers of the Party.
- (d) Officers of the Party are elected for a term of two years by the congress. When the terms" of the officers expire, the officers hold office until incoming officers are elected.
- (e) There is no limited to the number of terms that a person can be elected an officer of the Party.
- (f) Ad hoc officers of the Party remain ad hoc officers under the provisions of article 3(d)(vi) and according to the conditions laid down by the Commissars; council or the Congress.
- (g) There is no limit to the number of times that a person can be included as an ad hoc officer of the Party under the Provisions of articles 3 (d) (vi), 5(c) and 5 CO of the constitution.

DUTY OF OFFICERS

- (h) President
- (i) The work of the President is to lead the Party faithfully.
 - (ii) The President is the spokesperson for the Party
- (i) The Vice President
- (i) The work of the Vice President is to help lead the Party
 - (ii) The Vice President shall be responsible for overseeing the administration of the Party.
 - (iii) The Vice-President shall be responsible as the chairperson of the Congress, as Chairperson of Commissars' council and as chairperson of the Executive council for the good running of those bodies.
- (j) The Second Vice-President
- (j) The Work of the Second Vice-President is to help the President and the Vice-President.



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- (xxix) The Second Vice-President shall be responsible for co-overseeing administration of the Party.
- (xxx) The Second Vice-President shall be co-responsible, as the Deputy Chairperson of Congress, as Deputy Chairperson of commissars' council and as Deputy Chairperson of the Executive council, for the good running of those bodies.
- (k) The Secretary-General,
The work of the secretary-general is to co-ordinate the directing of secretariat work.
- (l) The Assistant Secretary-General
The work of the Assistant Secretary-General is to help the Secretary General.
- (m) The Treasurer
The work of the Treasurer is to be specifically responsible for the keeping, up to date, of appropriate documents and books of account that show the true money situation, asset situation and property situation of the Party as mentioned under the provisions of article 3 (d)(xxxv)(4).
- (n) The Assistant Treasurer
The work of the Assistant Treasurer is to help the Treasurer:
- (o) The Coordinating Officer
The Coordinating officer (hereinafter called the Coordinator") shall have and be responsible for all such duties, functions and responsibilities as the Congress after consultation with the Executive Council may from time to time decide, including:
 - (i) providing effective co-ordination of all affairs of the party and its administration;
 - (ii) providing effective and efficient supervision of all employees of the party who are working under his control;
 - (iii) work or other matters as the Executive Council may from time to time direct.

9. INTERPRETING THE CONSTITUTION

- (a) The constitution shall be read according to the ordinary meaning of the words used. When the meaning of words or the intention of the constitution is not clear a sensible interpretation should be given in the spirit of the Party's aims and work and not according to the technical meaning of the words.

SUBMISSIONS BY COUNSEL

The Court heard submissions from Mr Nalyal and Mr Hakwa to the following effect:



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Mr Nalyal on behalf of the claimants submitted to the effect that the Executive Council is a body that is important in the structure and functioning of the VP because:

- (a) The Executive Council is elected by Congress, the supreme body of VP;
- (b) Only the Congress can change, by election the members of the Executive Council (Article 3D(iv));
- (c) The membership of the Executive Council consist of the most important offices holders within the VP (Article 3D(ii));
- (d) The Executive Council is a body that constitutes or makes up Congress (Article 3A(i)(e));
- (e) At least half of the members of the Executive Council must be present to constitute a quorum for the Congress to open (Article 3A(xiii)(e));
- (f) The Executive Council is entitled to 1 vote at the Congress (Article 3A(xix)).

Mr Nalyal relies substantially on Article 3D(iv) of the VP Constitution. On the basis of that Article he submitted as follows:

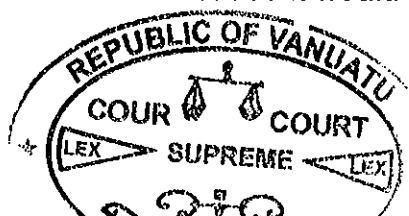
Article 3D(iv) has a special place in the VP Constitution.

Because of its special place in the VP Constitution, Article 3D(iv) makes it mandatory that the members of the Executive Council continue, after expiry of their term of office, to perform the duties and functions of a member, until new election of members are made by Congress.

He submitted that by virtue of Article 3D(iv) the members of the Executive Council continue to have mandate in terms of ensuring the proper functioning of the VP.

He submitted also that because the election of the Executive Council is a decision of the Congress, and only the Congress by virtue of Article 3A(viii), can change its decision, the Executive Council will continue to have a mandate, after expiry of its terms until the Congress itself, change its decision, by electing new members of the Executive Council.

He submitted, therefore, that the members of the Executive Council who were elected at the Ifira Congress, continued to have mandate until the Tongoa Congress. He says to argue that at the expiry of the terms of office of the members of the Executive Council, they no longer have a mandate would make no sense because it would mean

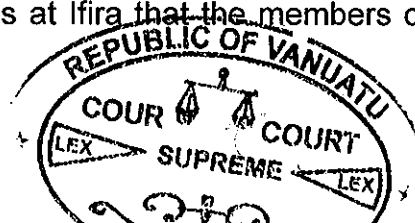


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that the functioning of the VP as an organisation would stop. He further submitted that this is not what is envisaged by the VP Constitution. The Constitution envisages that there be continuity in the functioning of VP hence, the important Article 3D(iv). Mr Nalyal further submitted that based on the principle of necessity that the EC continues to have a mandate – it is necessary that the VP, as an organisation, continue to function. He finally referred to the Court Judgment of 5 February 2010 in Civil Case No.11 of 2010 recognising the importance of the Executive Council and the necessity that its members continue to perform their functions (in terms of organising Congress), by ordering the members of the Executive Council to ensure that the Tongoa Congress takes place in April 2010. Mr Nalyal refers and relies on the authority of **Mataskelekele v. Abbil No.1** of [1991] VUSC7 and **Mataskelekele v. Abbil No.2** [1991] VUCA 1.

Mr Hakwa on behalf of the Respondents informed the Court from the beginning of his submissions on the preliminary issue that his submissions focussed on the members of the Executive Council elected by 30 August 2007 at Ifira Congress. Mr Hakwa refers to Articles 1 and 2 of the VP Constitution which set out the Preamble, aims, aspirations or objectives of VP. He refers to Article 3 of the VP Constitution which contains provisions about the VP Ruling Bodies and that right at the top of these Ruling Bodies comes the Congress. The Congress is and remains the decision making body of the Party.

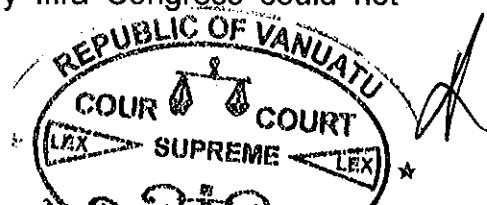
He argues that the supreme decision making authority does not rest with the Council or Officers of the Party but it is given to the members of the Party who exercise the same through or by their Congress. He said this was the first occasion where any Council had failed and/or neglected to convene a Congress in a calendar year. He said that whilst it is accepted that the VP may convene more than one Congress in a year, the Constitution does not contemplate or provide that there be no Congress at all in any calendar year. He then submitted that the reference to “year” in Article 3A(i) of the Constitution means “Calendar Year”. He also submitted that clearly the intention of the founding fathers of VP as manifested by the current provisions of the Constitution that the VP shall or must have at least one Congress in any calendar year. In the circumstance of this case, the members of the Council were elected by the Ifira Congress on or about 30 August 2007 for a term of two (2) years. He says despite that reference is made in the Resolution of VP Congress at Ifira that the members of the



Council will hold office for two (2) yeas, it is a repetition of what Article 3D(iv) of VP Constitution says and the Ifira Congress resolution does not affect the legal effect of Article 3D(iv).

He explained that the reason why the Congress did this was to inform its members that those just elected as members of the Council would serve for two years and there would be another election held within two years to elect members of the Council again. He submitted further that in accordance with the provisions of Article 3D(iv) the term of office of those members of the Council who were elected by the Ifira Congress on 30 August 2007 came to an end on or about 30 August 2009. Those members of the Council elected by the Ifira Congress failed to convene a Congress in 2008 and 2009, such failure being clear breach of Article 3A(i), 3A(vi) and 3D(viii) of the Constitution.

Mr Hakwa further said that there is no provision in the Constitution as to how a Congress is called or convened. It is a practice by the Party that the Party meeting in Congress would decide the venue for its next Congress and that would be announced and with a mandate given to the Council to decide the actual date and time of the Congress. He said the Ifira Congress authorised the Council to set the date and time for the 37th Congress on Tongoa. The Council did not carry out such mandate or decision made by the Ifira Congress in 2008, 2009 and 2010. He submitted the VP Constitution must be read as a whole so that all its provisions make sense and/or remain workable and he refers the Court to Article 9(a) of the VP Constitution for assistance. He submitted in substance that the purpose or intention of Article 3D(iv) of the Constitution is to cater for a situation where the Congress is convened in any calendar year at such time where the term of office of a member of the Council has already expired. In most cases the convening of the Congress does not necessarily fall on the same day as the second anniversary of the date of election of a member of the Council. He submitted as an example that Article 3D(iv) allows those members of the Council elected by the Ifira Congress to continue to exercise or perform their duties or functions after 30 August 2009 but not beyond 31 December 2009. Mr Hakwa submitted that it is not the intention of the founders of the Party as manifested by their Constitution to allow the Party not to have any Congress in any one calendar year or for members of the Council to run the Party without any Congress. He finally submitted that those members of the Council elected by Ifira Congress could not



continue to hold themselves out as members of the Council or continue to carry out their duties and functions as members of the Council beyond 31 December 2009 because the provisions of Article 3D(iv) of the Constitution do not apply in their case. Any other interpretation Mr Hakwa submitted, would make the provisions of Article 3A(i) and 3D(iii) nugatory or irrelevant.

COURT CONSIDERATIONS

The Court has to determine this preliminary question:

“If the terms of the Executive Council hereinafter referred to as “EC” expires, does the EC continue to have a mandate?”

Mr Nalyal’s submissions rely on Article 3D(iv) while Mr Hakwa’s submissions rely on Article 3A(i) both of VP Constitution.

Article 3A provides:

“3. RULING BODIES

A) CONGRESS ESTABLISHMENT

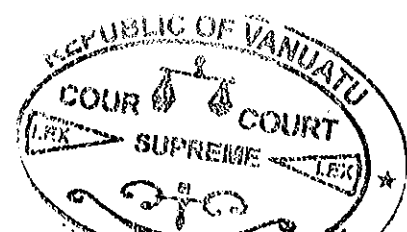
The Party shall have a “Congress” which shall meet at least once a year.”

Article 3D(iv) provides:

“Members of the Executive Council, shall be elected by the Congress, for a term of two years and in the event that a members’ term of office expires before the convening of the next congress to elect new members, that member shall continue to perform the duties and functions of a member, until new election of members are made by the Congress.”

Under the VP Constitution, the Congress is the supreme decision-making authority of the VP. The Party shall have a Congress which shall meet at least once a year (Article 3A). The Party may convene more than one Congress in a year. It is accepted that the reference to “year” in Article 3A(i) of the Constitution means “calendar year” and so the VP shall have at least one Congress in any calendar year.

It is common ground that no VP Congress was convened in 2008 and 2009. This constituted clear breach of Article 3A(i) of the VP Constitution as declared by the



Court to that effect on 5 February 2010. The breach has been remedied by the Court ordering the members of the Executive Council elected at Ifira Congress to organise the next Congress on the Island of Tongoa as mandated to the Council by the Ifira VP Congress. That is quite a separate matter.

The issue here is whether the members of the Executive Council continue to perform their duties and functions after their two years term of office expired.

Article 3D(iv) of the VP Constitution provides the answer to the preliminary question posed. It means what it says:

"Members of the Executive Council, shall be elected by the Congress, for a term of two years and in the event that a members' term of office expires before the convening of the next congress to elect new members, that member shall continue to perform the duties and functions of a member, until new election of members are made by the Congress." (my emphasis)

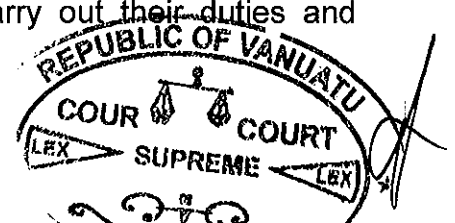
The words used in Article 3D(iv) are simple and clear. They mean this: "if the office term of 2 years of the members of the Council expires, they continue to perform their duties and functions until the Congress elects new members of the Council.

Article 9(a) of the VP Constitution supports this interpretation as it is within the ordinary meaning of the words used in Article 3D(iv).

Mr Hakwa's submissions that the intention of Article 3D(iv) is to cater for a situation where the Congress is convened in any calendar year at such time where the term of office of a member of the Council has already expired cannot stand. This interpretation imports into the meaning of Article 3D(iv) the meaning and interpretation of the words used in Article 3A(i) relating to the convening of the Congress at least once a year. This type of interpretation imports technical meaning of the words used and so it is not authorised by Article 9 of the VP Constitution.

Article 3D(iv) of the VP Constitution applies to the case of the members of the Executive Council elected at Ifira Congress on 30 August 2007.

The submissions by Mr Hakwa on behalf of the Respondents that the members of the Council elected at Ifira Congress could not continue to carry out their duties and



functions as members of the Council beyond 31 December 2009 because the provisions of Article 3D(iv) of the Constitution do not apply in their case cannot stand and so they are rejected.

Mr Hakwa's written submissions at paragraphs 2.4 confirmed that Honourable Nipake Edward Natapei officiated the opening of the VP 37th Congress in Tongoa where he stated:

"2.4 *It is common ground between the parties that:*

(a) *On 01 April 2010 Honourable Nipake Edward Natapei formally opened the 37th Congress of the VP at Lumbukuti Village, Tongoa, and*

...."

This begs the question: If Honourable Nipake Edward Natapei officially opened the VP 37th Congress at Lumbukuti, in what capacity did Mr Nipake Natapei officiated the 37th VP Congress? That question was posed by the Court to Mr Hakwa during the conference management on the preliminary issue for clarification. Mr Hakwa responded that Mr Nipake Natapei officiated as an individual. The Court does not and cannot accept that answer for the reason contained in the VP Constitution.

Article 3A(ix) and (x) deals with the proceedings of the Congress in this way:

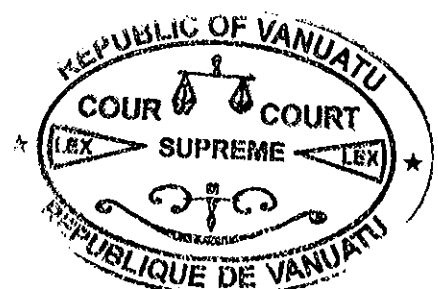
"3. RULING BODIES

A) CONGRESS ESTABLISHMENT

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- (ix) *The President of the Party shall be the President of the Congress.*
- (x) *Every Congress, shall be opened by the President of the Party. The President may delegate this power to a senior officer of the Party where he is unable to be present."*

It is common ground that Honourable Nipake Natapei must have opened the VP 37th Congress in his capacity as the President of the Party and also President of the 37th VP Congress. Further as President of the Party, Honourable Nipake Natapei is an elected member of the Executive Council (Article 3D(ii)(1)). He was elected at the Ifira VP Congress on 30 August 2007.



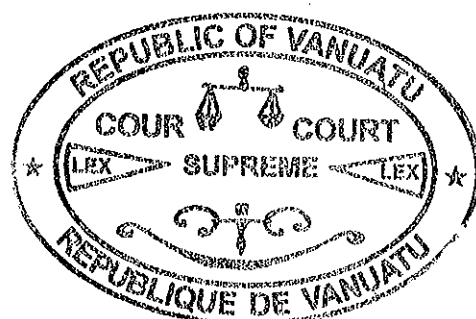
If the submissions by Mr Hakwa that Article 3D(iv) of the VP Constitution does not apply to the case of the members of the Executive Council elected at Ifira Congress which included Hon. Nipake E. Natapei, Mr Natapei would not officiate the VP 37th Congress opening as stated because it would be contrary to the VP Constitution. Mr Hakwa's statements at paragraphs 2.4 (and 2.5) of his written submissions on the preliminary issue constituted admission on the part of the Respondents that Article 3D(iv) applies to the case of the members of the Executive Council elected at Ifira Congress on 30 August 2007.

The Court accepts the submissions of the Claimants that because the election of the Executive Council is a decision of the Congress, and so only the Congress by virtue of Article 3D(viii), can change its decision, the members of the Executive Council continue to perform their duties and functions after expiry of the term until the Congress itself, changes its decision, by electing new members of the Council. The members of the Council elected at Ifira Congress continued to have mandate until the Tongoa Congress.

It is also accepted that the argument and submissions that the mandate of the members of the Council stops at the expiry of the term of office of the members of the Council would not make sense because it would mean that the functioning of the Party as an organisation would stop. This is not what is envisaged by the VP Constitution. Article 3D(iv) envisages that there be continuity in the functioning of the Party until the Congress elects new Council members.

It is also noted as the circumstance of this case illustrate that the members of the Council continue to perform their duties and functions as members based on the principle of necessity for the Party as an organisation and in the interest of its members until the election of new members of the Council by the Congress.

It is further accepted that an integral body of the VP, the Executive Council will always have a mandate, and the only change is the election of its members, who exercise that mandate.



The Court, in its judgment of 5 February 2010, recognised the duties and functions of the members of the Executive Council and the necessity that its members continue to perform their duties and functions, in the circumstances prevailing by ordering the members of the Executive Council to ensure that the Tongoa Congress takes place in April 2010. (Civil Case No.11 of 2010). Reference is made to **Mataskelekele v. Abbil No.1** [1991] VUSC 7 and **Matakelekele v. Abbil No.2** [1991] VUCA 1 as case authority on the question at issue.

CONCLUSION

The members of the Executive Council elected at Ifira Congress on 30 August 2007 continue to perform their duties and functions until the Congress elects new members of the Executive Council.

These are the reasons for the oral ruling on the preliminary question posed made by the court on 6 July 2012.

ORDER

1. Article 3D(iv) applies to the case of the members of the Executive Council elected by the VP 36th Congress at Ifira. They continue to perform their duties and functions until the Congress elects new members of the Executive Council.
2. The Claimants are entitled to costs to be agreed or taxed.

DATED at Port-Vila this 6th day of July 2012

BY THE COURT



**Vincent LUNABEK
Chief Justice**

