

BETWEEN: **NIPAKE EDWARD NATAPEI MP and 26 other
Members of Parliament**
 27 Applicants

AND: **GEORGE ANDRE WELLS, Speaker of
Parliament**
 First Respondent

AND: **REPUBLIC OF VANUATU**
 Second Respondent

Coram: *Lunabek CJ*

Counsel: *Mr Colin Leo for the Applicants*
 Mr Avock Godden for the First and Second Respondents

Hearing date: *6 December 2012*

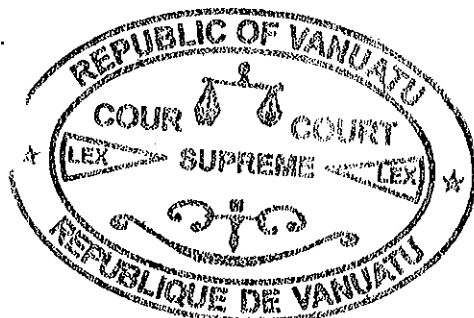
Judgment date: *7 December 2012*

ORAL JUDGMENT

This is an Amended Urgent Constitutional Application filed pursuant to Articles 53(1)(2) of the Constitution. It is initially filed 4 December 2012 and amended on 6 December 2012. The Applicants are 27 Members of Parliament. They challenge the constitutional validity of the decision of the First Respondent Speaker of Parliament of 3 December 2012 declining the request of the Applicants to summon Parliament for an extraordinary session to debate a motion of no confidence in the Prime Minister of Vanuatu. The said decision of the Speaker bears the date of 3 November 2012 but it was made on Monday 3rd December 2012.

The Applicants say the impugned decision infringes their rights pursuant to Article 21(2) of the Constitution and so it was unconstitutional. They claim also for damages and/or compensation and they seek costs against the First Respondent. The relief sought are in the Urgent Application.

Article 21(1)(2) of the Constitution provides:



"21. *Procedure of Parliament*

- (1) *Parliament shall meet twice a year in ordinary session.*
- (2) *Parliament may meet in extraordinary session at the request of the majority of its members, the Speaker or the Prime Minister.*
- (3) ...
- (4) ...
- (5) ..."

The request was signed by 27 Members of Parliament which is the majority of 52 members of the current Parliament of Vanuatu.

A response to the Urgent Application was filed on 6 December 2012. It says that there was no majority of the Members of Parliament requesting Parliament to meet at the time when the First Respondent was presented with the request for the calling of the 1st Extraordinary Session of Parliament ("request") and the motion of no confidence ("the motion") and says the decision of the Speaker on 3 December 2012 is constitutional and it denies that the Applicants are entitled to the remedies they claim.

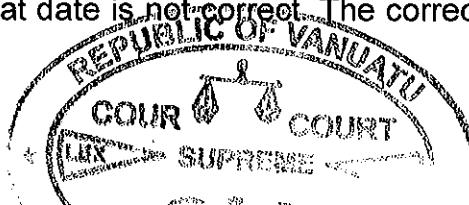
The Applicants file a number of sworn statements in support of the Application. The First Respondent also file a sworn statement in support of the Response.

There is no disputed facts between the parties. The following is a summary of the background of events leading up to the challenge in the Supreme Court.

1. On Wednesday 28 November 2012, 27 Members of Parliament requested the First Respondent/Speaker of Parliament to summon Parliament for an extraordinary session of Parliament for Parliament to debate a Motion of No Confidence in the Prime Minister of Vanuatu.
2. A Notice of Motion of No Confidence in the Prime Minister Hon. Sato Kilman was also issued pursuant to Article 43(2) of the Constitution by the Applicants.
3. A Motion containing the purpose of the calling of the Parliament in an extraordinary session was also attached.

The First Respondent Speaker received the request, the Notice of Motion and the Motion with its purpose on Monday 3 December 2012.

The First Respondent Speaker made a decision over the request of the Applicants in a letter dated 3rd November 2012. But that date is not correct. The correct date



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was 3 December 2012. That letter was addressed to Hon. Nipake Edward Natapei, Leader of Opposition in these terms:

"I also wish to confirm receiving from you the following:

1. *A Notice of Motion of No Confidence in the Prime Minister The Hon Sato Kilman Livtunvanu signed by a majority of the members of Parliament and which complies fully with Article 42 of the constitution;*
2. *A Request for Extraordinary Sitting of Parliament signed by a majority of the Members of Parliament and which complies fully with each of Article 21(2) of the Constitution and Clause 14 of the Standing orders of Parliament .*

I further wish to bring to your knowledge that I have received today, Monday 03rd December 2012, a letter from Hon: Kalfau Moli, Member for Luganville informing me of his decision to withdraw his signature and support on the request to the speaker for Parliament to meet in a Extraordinary sitting.

With the Withdrawal of Hon. Kalfau Mali's signature and support on the request for an Extraordinary sitting of Parliament, the total number of signature on the request has fallen from 27 to 26 signatures."

Court Consideration

Following are the relevant provisions of the Constitution in this case.

- Article 2

"2. CONSTITUTION SUPREME LAW
The Constitution is the supreme law of the Republic of Vanuatu."

- Article 21(2)

"21. PROCEDURE OF PARLIAMENT

(1) *Parliament shall meet twice a year in ordinary session.*

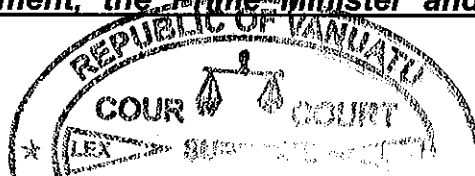
(2) **Parliament may meet in extraordinary session** at the **request** of the **majority of its members**, the Speaker or the Prime Minister.
[Emphasis added]

- Article 43

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

(1) *The Council of Ministers shall be collectively responsible to Parliament.*

(2) **Parliament may pass a motion of no confidence in the Prime Minister.** At least 1 week's notice of such a motion shall be given to the Speaker and the motion must be signed by one-sixth of the members of Parliament. **If it is supported by an absolute majority of the members of Parliament, the Prime Minister and other**



Ministers shall cease to hold office forthwith but shall continue to exercise their functions until a new Prime Minister is elected.”
[Emphasis added]

- Article 53(1), (2)

“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.”*

Applying of the law to the undisputed facts of this case, it is of fundamental importance for the Speaker of Parliament to understand that as Speaker, he is the Constitutional Officer of the Parliament of Vanuatu. So, the Speaker of Parliament must obey and respect the provisions of the Constitution in the exercise of his duties as a Speaker of Parliament.

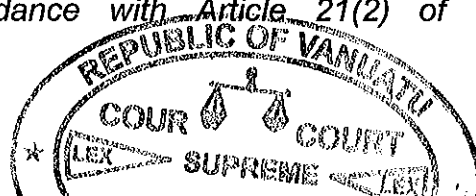
In the present case, the withdrawal of the signature of the member Kalfau Moli on the request and support to call for an extraordinary session of Parliament is not a matter at the discretion of the Speaker. That is a matter for Parliament. It follows that the consideration of the withdrawal of the signature of the Member Kalfau Moli on the request and his support for Parliament to meet in an extraordinary session is a matter which is beyond the constitutional duty of the Speaker of Parliament under Article 21(2) of the Constitution. The decision of the First Respondent Speaker of 3 December 2012 declining to summon Parliament at the request of the majority of the members of Parliament is infringing the rights of the Applicants under Article 21(2) of the Constitution.

Following case authorities are in support of the present case.

- (1) **Lini v. Speaker** [2004] VUSC 42; Civil Case 154 of 2004.
- (2) **Attorney-General & Natapei v. Willie Jimmy** [1996] VUCA 1.

In **Lini v. Speaker of Parliament** [2004], it was held (at page 15):

“The calling of an Extraordinary Session of Parliament at the request of a majority of the Members of Parliament is not a matter at the discretion of the Speaker of Parliament. Once the Respondent/ Speaker of Parliament receives such a request by a majority of the Members of Parliament in accordance with Article 21(2) of the



Constitution, the Speaker has no choice. He must summon Parliament."
[Emphasis added]

The Court of Appeal interpreted Article 21(1) & (2) of the Constitution in the case of **Attorney General and Edward Natapei v. Willie Jimmy and other, Court of Appeal [1996] VUCA 1; Case No. 07 of 1996**. In that case, the Court of Appeal held (at page 7):

"The correct analysis is that the constitutional right of a majority of members to require that Parliament be summoned in extraordinary session is found in Article 21(2) of the Constitution.

The use of the word "shall" in Article 21(1) and the word "may" in Article 21(2) is not in our opinion intended to indicate that the calling of an Extraordinary Session is a matter of discretion. It merely recognizes whereas there must be at least two ordinary parliamentary sessions each year, in addition there "may" be extraordinary sessions if requested

To construe Article 21(2) as the appellants propose would-

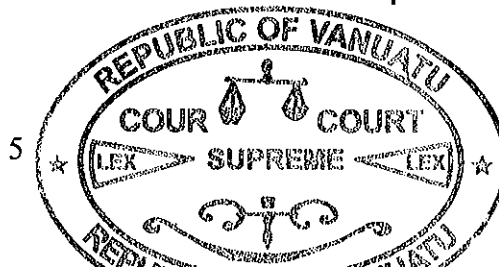
- (i) **Deprive the majority of the members of the House from exercising the power to legislate, by majority decisions, as is the plain intention of the Constitution** — see Articles 1, 4 and particularly 21(3); and
- (ii) **Give the Speaker, an officer of Parliament, the discretionary power to determine whether or not a majority of its members should have the opportunity to make parliamentary decisions at any time other than during the biannual ordinary sessions.**

That result would be so contrary to the plain intention of the Constitution that the Court would only adopt such a construction if the language of Article 21(2) compels that course. It does not.

In our view the only tenable construction of Article 21(2) is that a majority of members can require that Parliament be summoned to consider business in Extraordinary Session. Unless that construction is adopted there would be no purpose in the Constitution providing for extraordinary sessions.

It follows that if the respondents' request was within the parameters of Article 21(2), the Speaker's rejection of that request was a breach of the respondents' right under that Article to have Parliament summoned" [at page 6]. **[Emphasis added]**.

The claim for damages/compensation sought by the Applicants is an incidental claim from the infringement claim right under Article 21(2) of the Constitution. It is so misconceived. In any event no basis or evidence are clarified or provided. It must be rejected.



On the basis of the above consideration, the Court grants the following Orders and Declarations:

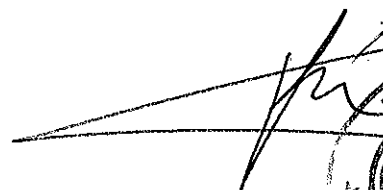
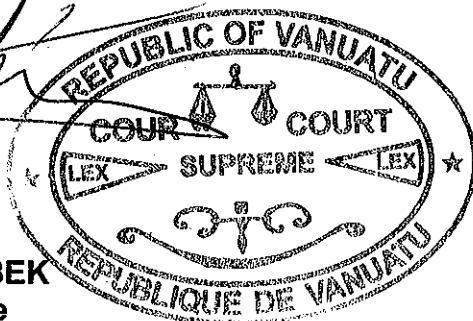
ORDERS AND DECLARATIONS

The Court makes the following Orders and Declarations:

1. THAT the decision of the First Respondent, the Speaker of Parliament, Hon. George Andre Wells dated 3 December 2012 in which the Speaker of Parliament purportedly decline to summon Parliament was unconstitutional and infringed the rights of the majority of members of Parliament pursuant to their request for Extraordinary Session of Parliament under Article 21(2) of the Constitution.
2. The Respondent/Speaker of Parliament is directed to summon Parliament to meet in an Extraordinary Session to debate the Motion of No Confidence in the Prime Minister dated 30 November 2012 on Friday 7 December 2012 at 2.00pm o'clock.
3. The claim for damages and/or compensation are rejected.
4. The Applicants are entitled to their costs against the First and Second Respondents and such costs be agreed or taxed.

DATED at Port-Vila this 7th day of December 2012

BY THE COURT



The seal is circular with the text 'REPUBLIC OF VANUATU' at the top and 'REPUBLIQUE DE VANUATU' at the bottom. Inside the seal, there is a central emblem featuring a scale of justice and the word 'SUPREME'. The words 'COUR' and 'COURT' are on either side of the emblem, and 'LEX' is written in two small boxes on the left and right sides. A star is located on the right side of the seal.

Vincent LUNABEK
Chief Justice