

**IN THE MATTER OF:**

**ARTICLE 53 OF THE CONSTITUTION  
OF THE REPUBLIC OF VANUATU**

**BETWEEN:** Hon. HAM LINI VANUAROROA, Hon.  
M. SATO KILMAN LIVTUNVANU, Hon.  
JOHN LUM, Hon. CHARLOT SALWAI,  
Hon. WILLIE J. TAPANGARARUA,  
Hon. PAUL B. TELUKLUK, Hon. DON  
KEN, Hon. TONY NARI, Hon. ALFRED  
CARLOT, Hon. KALFAU MOLI, Hon.  
JAMES BULE, Hon. BRUNO  
LEINGKONE, Hon. STEVEN  
KALSAKAU, Hon. HAVO MOLI, Hon.  
SAMSON SAMSEN, Hon.  
CHRISTOPHER C. A. EMELE, Hon.  
DUNSTAN HILTON, Hon. THOMAS  
LAKEN, Hon. GEORGE A. WELLS,  
Hon. MORKIN I. STEVENS, Hon.  
MARCELLINO PIPITE, ISAAC B.  
AMARILIU, Hon. PASCAL S. IAUKO,  
Hon. GEORGE A. WELLS,  
Applicants

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

**AND: SPEAKER OF PARLIAMENT**  
Second Respondent

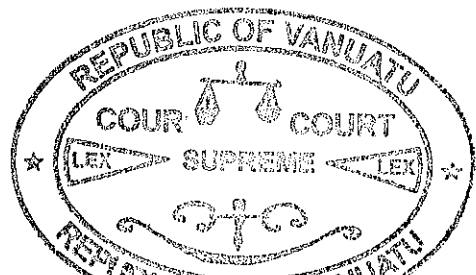
**AND: Hon. ARNOLD PRASAD, HON. JONAS  
JAMES, Hon. JOHN AMOS VACHER,  
Hon. TOARA DANIEL KALO**  
Interested Parties

*Coram: Chief Justice Vincent Lunabek  
Mr Bill Bani for Applicants  
Mr Frederick Gilu for First Respondent  
Mr Kiel Loughman for Second Respondent  
Mr Garry Blake for MP Christopher Emilee and above name Interested Parties*

**INTRODUCTION**

**URGENT CONSTITUTIONAL APPLICATION**

This is an Urgent Constitutional Application filed 13 July 2013 with sworn statements in support of the application. The Applicants request the Speaker of Parliament to summon Parliament for an extra ordinary session pursuant to Article 21 (2) Constitution by 18 July 2013.



The Speaker made a ruling on 11 July 2013 refusing to summon Parliament in an extra ordinary session as requested by the Applicants. The Speaker provided reasons, among other matters that:

- (i) The request bore signatures of following Four (4) members of Parliament which have been forged: Arnold Prasad, Jonas James, Toara Daniel and John Amos
- (ii) A newly elected Member of Parliament Pascal Sebastien Iauko signature's on the request is invalid as he was not sworn in as a Member of Parliament.
- (iii) A Member of Parliament, George Andre Wells' signature on the request was invalid as he is still suspended by Parliament since 6 April 2013.

The applicants challenge the decision of the Speaker refusing to summon Parliament in an extraordinary session of 11 July 2013. They apply pursuant to Article 53(1) (2) of the Constitution.

On 15 July 2013, the Court gave leave for Mr Bill Bani to file and serve an Amended Urgent Constitutional Application to the following effect:

- (a) add the Speaker of Parliament Hon. Philip Boedoro as Second Respondent; and
- (b) add following named Members of Parliament: Arnold Prasad, Jonas James, Toara Daniel and John Amos Vacher as Interested Parties.

On 15 July 2013, Mr Bani filed and served an Amended Urgent Constitutional Application to the effect sought on 13 July 2013.

The Applicants apply for the following declarations and orders:

1. A declaration that the decision of the Speaker of Parliament on Thursday 11<sup>th</sup> July 2013 declaring invalid, the Request for calling of an Extraordinary Session of Parliament to debate and vote on Motion to reinstate MP George Andrew Wells and Motion of No Confidence in the Prime Minister and removal of the Speaker of Parliament, upon the reasons given therein that signatures of John Amos Vacher, Jonas James, Arnold Prasad and Toara Daniel Kalo had been been forged is invalid and of no legal effect.
2. An Order the decision of the Speaker of Parliament on Thursday 11<sup>th</sup> July 2013 declaring invalid, Pascal Sebastien Iauko's signing of the Request for an extraordinary sitting of Parliament and the Motion of No Confidence against the Prime Minister on the basis that Pascal Sebastien Iauko is yet to take his oath as a Member of Parliament is invalid and of no legal effect.
3. An order that the decision of the Speaker of Parliament on Thursday 11<sup>th</sup> July 2013 declaring George Andre Wells ineligible to sign any Request for Calling of an extraordinary session of Parliament due to



George Andre Wells currently being on suspension from Parliament as of 6<sup>th</sup> April 2013 is invalid and of no legal effect.

4. An Order that the Respondent pays the Applicant's cost of these proceedings.

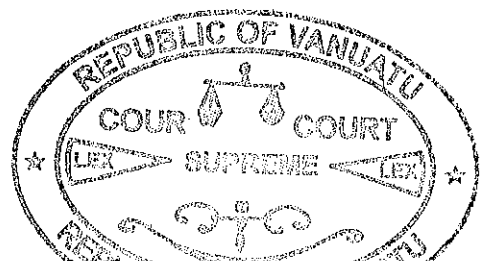
The Applicants file their Urgent Constitutional Application on following grounds:

### **GROUND OF URGENT APPLICATION**

1. They are Members of Parliament on the opposition side to the government in Parliament. On 30 March 2013, subsequent to the new Government being formed with Moana Carcasses Kalosil as Prime Minister they signed a Request for and extraordinary session of Parliament letter. The Request although signed on 30 March 2013, remained undated. The Request was subsequently dated 10 July 2013 and then deposited with the office of the Speaker of Parliament.
2. Prior to the Applicants lodging the Request dated 10<sup>th</sup> July 2013, some of the Applicants did obtain the reaffirmation from: (1) John Amos (2) James Jonas (3) Arnold Prasad (4) Toara Daniel Kalo to reaffirm their support for the signed request for an extraordinary session of Parliament.

### **PARTICULARS**

- (i) Tony Nari spoke to John Amos who was in Solomon Islands and John Amos provided a letter affirming his signature on the Request of Extraordinary Sitting.
  - (ii) Bruno Leingkone and Geore Toa did speak to Jonas James on 10<sup>th</sup> July, 2013 at 11.22am at the Tropical Market whereby he reconfirmed that his signature remains on the Motion to be deposited with Speaker on 3pm on 10<sup>th</sup> July 2013.
  - (iii) Paul Telukluk had been speaking with Arnold Prasad
  - (iv) Steven Kalsakau had been speaking with Toara Daniel
3. The Speaker infringed the constitutional rights of the Applicants in Article 21(2) by his declaring that the Calling was not in order when it was clear on the face of the document that a majority were requesting the calling of an extraordinary session of Parliament i.e. 28 Members had signed the Request for calling.
  4. The Speaker infringed the constitutional rights of the Applicants when overly participated in getting the four MPs to sign standard letters of withdrawals in his office instead of proceeding with calling Parliament to meet and such withdrawals would only properly be made on the floor of Parliament.
  5. The Speaker infringed the constitutional rights of the Applicants by overruling the Request for Calling of an extraordinary session on the basis that the four signatures were forged when the said signatures were made by the signatories on a document which they knew full well that it was a request for calling of an extraordinary session of Parliament.



6. The Speaker infringed the constitutional right of Pascal Sebastien Iauko in Article 43(2) by disallowing him from exercising his constitutional right to participate in a vote of no confidence motion against a Prime Minister.

7. The Speaker infringed the constitutional right of George Andre Wells in Article 43(2) by disallowing him from exercising his constitutional right to participate in a vote of no confidence motion against a Prime Minister.

8. The Speaker infringed the constitutional rights of the Applicants by placing undue weight on Constitutional Case No.02 of 2010 when that case is easily distinguishable from the present case on the facts e.g. none of the signatures of the four MPs concerned were forged or obtained by deceit.

### **RESPONSE OF THE FIRST RESPONDENT – THE REPUBLIC OF VANUATU**

The First Respondent is the Republic of Vanuatu in the Constitutional Application. The Solicitor General filed a Response on behalf of the Republic to the effect that the Republic will be bound by any order of made by the Court. It is understood that Counsel for the Republic will assist the Court when required to do so.

### **RESPONSE OF THE SECOND RESPONDENT – THE SPEAKER OF PARLIAMENT**

The case or Response of the Second Respondent Speaker of Parliament Hon. Philip Boedoro is that he had received a Request from the Applicants to summon Parliament pursuant to Article 21 (2) of the constitution on 10 July 2013. In the Request, the Applicants wanted to debate and vote:

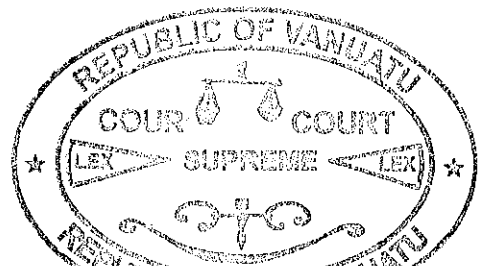
- a Motion to reinstate MP George Andre Well from his suspension;
- a Motion of no confidence against current Prime Minister Hon. Moana Carcasses Kalosil; and
- a Motion to remove the Speaker of Parliament

Few minutes after the Applicants lodged the Request for the Speaker to summon Parliament pursuant to Article 21 (2) of the Constitution, Four (4) Members of Parliament, namely Jonas James, Prasad Arnold, Toara Daniel Kalo and John Amos Vacher approached the Second Respondent Speaker in his office on 10 July 2013 making declaration to the effect that they denied they signed a Request for an extraordinary session of Parliament on 10 July 2013.

Each of the Four above named MP's signed each a written statement to the Speaker on 10<sup>th</sup> July 2013 denying that each signed a Request pursuant to Article 21(2) on 10 July 2013.

The Speaker also considered that one of the Applicants, MP George Andre Wells is on suspension since 6 April 2013 to 31 December 2013.

The Speaker also considered that a newly elected MP, namely Pascal Sebastien Iauko has not yet taken Oath as a member of Parliament.



It is the response of the Second Respondent Speaker that having considered all that, the Speaker concluded that the Request dated 10 July 2013 was not in order as the request cannot be within the submit of Article 21(2) of Constitution.

The Speaker informed the Applicants of his decision in a letter dated 11 July 2013. Hon. Ham Lini Vanuaroroa on behalf of the Applicants as Leader of Opposition replied to the Speaker's letter in a letter dated 12 July 2013.

## **RESPONSE OF INTERESTED PARTIES**

Jonas James, Toara Daniel Kalo, Prasad Arnold and John Amos Vacher are Four (4) Members of Parliament (MP's) who made statement to the Speaker on 10 July 2013 as their signature appeared on the Request to convene Parliament. They stated to the Speaker that they did not sign the Request to convene Parliament in an extraordinary session dated 10 July 2013.

Jonas James, Toara Daniel Kalo, and Arnold Prasad gave evidence on the circumstances in which their signatures are present on the Request.

It is the response of the interested Parties that they made statements to the speaker on 10 July 2013 and they sworn in statements to Court asserting that their signatures on the request are not signed for the purpose of which they were signed. They said their signatures have been misused.

At the pre-conference hearing, Christopher Emilee whose name also appears as an applicant filed a sworn statement that he did not consent to be an applicant in this proceeding and his name and signature are used without his consent in the request lodged to the Speaker on 10 July 2013. He is interested in this proceeding.

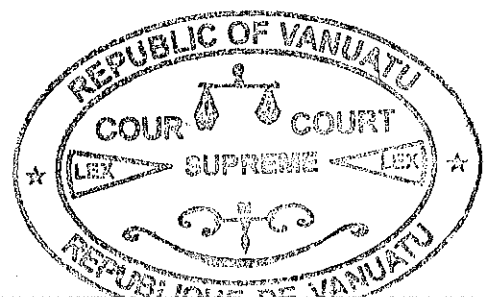
The Interested parties say their names and signatures as relied upon in the Request dated 10 July 2013 have no force or effect and so cannot be within the ambit of Article 21 (2) of Constitution.

Following are agreed Facts:

### **AGREED FACTS**

- There is a Request by Applicants to Speaker of Parliament under Article 21 (2) Constitution dated 10 July 2013.
- The Speaker made a Response refusing the Request on 11 July 2013.
- Mr Pascal Sebastien Iauko is a newly elected member of Parliament. He has not been sworn in as a Member of Parliament.
- Mr George Andre Wells is an elected members of Parliament. Parliament suspended him on 6 April 2013. He is suspended until 31 December 2013.

Following are Factual and legal disputes to be resolved:



## **FACTUAL DISPUTES**

Whether names and signatures of following named Members of Parliament in the Request to the Speaker: Arnold Thomas Prasad, Jonas James, John Vacher Amos, Toara Daniel Kalo and Christopher Emelee misused as used in the Request without the interested parties' respective consent or authorisation?

## **LEGAL DISPUTES**

[a] Whether, Pascal Sebastien Iauko, a newly elected member of Parliament who has yet to be sworn in as a member of Parliament pursuant to relevant laws can sign a Request under Article 21 (2) of Constitution? If so, whether it was invalid?

[b] Whether, MP George Andre Wells, a suspended Member of Parliament can sign a Request pursuant to Article 21 (2) of Constitution? If so, whether it was invalid?

## **ISSUE :**

Was the decision of the Speaker of Parliament dated 11 July 2013 to the effect that the Request for an extraordinary session of Parliament lodged pursuant to Article 21(2) of the Constitution dated 10 July 2013 was not in order, unconstitutional?

## **SUMMARY OF EVIDENCE**

What follows is the summary of evidence of the Applicants, second Respondent Speaker and the interested parties on factual disputes.

## **SUMMARY OF EVIDENCE OF APPLICANTS**

The Applicants filed sworn statements and called six (6) witnesses.

Mr Sato Kilman Livtunvanu is the first witness for the Applicants. He gave evidence to the effect on 28 March 2013, he resigned from his position as Prime Minister of the Republic of Vanuatu. A new Prime Minister was elected by Parliament on Saturday 30 March 2013. In his written sworn statement he stated they had a meeting at approximately 4.00PM on 30<sup>th</sup> March 2013 at Charlot Salwai's Nakamal at Fresh Wota. He changed the date of 30 March and said it was 6 April 2013 and all of them signed a document entitled: "Request for an extraordinary session of Parliament." He said subsequent to that date (6 April 2013) other Members of Parliament placed their signatures in support of this request. They then lodged this request with the Speaker of Parliament on 10 July 2013.

On 11 July 2013, he was with Mr Ham Lini (Leader of Opposition) and Mr Charlot Salwai at the office of the Speaker when the Speaker showed them his formal written response to their Request declaring it was not in order.

He was cross-examined. He said the Request was signed on 6 April 2013. He confirmed the Speaker at the time was Mr George Andre Wells. He confirmed that at the time they signed the Request, they did not have a majority of Members of Parliament.



He explained the purpose was to build up the numbers before the Request could be lodged.

At the time, the Request was not directed to anybody as they did not have a majority. He said he had witnessed MP Jonas James signed the Request at Mr Salwai's Nakamal as at that time Mr Jonas James requested a truck to take him from his house to sign the Request and the truck dropped him off at a reception. He said Arnold Prasad and Toara Daniel Kalo were not at the Nakamal with them. He said MP John Amos signed the document. He confirmed he was in the politics for 19 years. He saw many changes in the Government. He was involved in many negotiations. He was asked he said not all politicians changed their minds but some politicians did. He was asked and he confirmed he had changed his minds when he was in Government with Natapei but after one (1) year, he said. He was asked and he confirmed one of the things done by politicians was to sign Memorandum of Understanding (M.O.U). He was asked and he accepted that the right to convene Parliament in an extraordinary session is a constitutional right and the document – Request is given to Members of Parliament to exercise their rights responsibly. He accepted that when he exercised that right, he has to ensure that he has the support of Members of Parliament. It was suggested to him and he accepted that the best way is to have a written document.

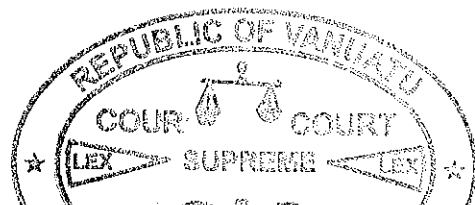
It was suggested to him and he accepted that the Request was signed on 6 April 2013 and the signatures can be used on the request of 10 July 2013 as the signatories reconfirmed their support of the Request before it was lodged. It was put to him and he stated he never saw the papers prepared for the Leader of Opposition which were shown to him and attached to Jonas James' sworn statement and marked ["JJ2"]. He agreed the papers were not sensible documents to have, the signatures are enough.

It is put to him whether the signatures obtained 4 months earlier are enough or whether the signatories must reconfirm their signatures. He answered that the Members of Parliament were asked to reconfirm their consent to the Request. It was put to him that if he refused to sign the request letter, this must mean that he does not support it. It was suggested to him and he accepted that if every applicant had signed a letter of Request on 10 July 2013, no one will be in Court today. He confirmed that there was no letter signed.

It was put to him whether in politics when there are 28 politicians who changed their minds whether it is fair to assume that they did not change their minds. He answered Yes as Leaders. It was put to him and he agreed he was aware of the costs and about more than one million vatu daily.

It was again put to him whether the rights under Article 21(2) of the constitution were exercised responsibly by taking steps to convene Parliament without document based and without contemporaneous signatures. He responded if there were not 28 signatures, he will answer positively but when there are 28 signatures of Leaders, contemporaneous signatures are not necessary.

He was then challenged on the lack of contemporaneous signatures to seek Parliament to be convened and to change Government with scattered signatures on pieces of papers obtained 4 months earlier. He answered that they have done every efforts. He was shown with the signature of Arnold Prasad. He said it was a signature attached to the document.



*[Handwritten signature]*

He was asked and he accepted that in future, it will be of good idea for all signatures to be on 1 document only.

He was re-examined. He confirmed MP Jonas James signed the Request to call in of a Motion of No Confidence in the Prime Minister at the Kava Nakamal of MP Charlot Salwai on 6 April 2013. He confirmed that they asked members of Parliament to contact other Members of Parliament if they are still supporting the Motion or not. They had the support, he said.

Mr Bruno Leingkone is the Second witness of the Applicants. He is a Member of Parliament. He gave evidence to the effect that he has co-signed the so called Request for an extraordinary session of Parliament on 30 March 2013 at MP Charlot Salwai's premises at Freshwota, Port Vila. He remembered that letter or document was undated as it remained for the Applicants to muster up the requisite numbers before formally lodging it with the Speaker. He said he did witness Jonas James sign the same letter as well. He said he subsequently on Wednesday 10 July 2013, called Jonas James and he met him again at the Tropical Market Shop, Port Vila. He said at 11.22am on 10 July 2013, he did ask Jonas James whether his signatures on the document that all signed on 30 March 2013 remained valid for the purposes of depositing the said document with the Speaker of Parliament at 3.00PM that afternoon. He said he recalls clearly that Jonas James verbally reaffirmed his consent to be subsequently deposited with the Speaker of Parliament that afternoon. He said the document/Request was then dated 10 July 2013 and deposited with the Speaker of Parliament at approximately 3PM on the same day.

He stated that contrary to what he stated at paragraph 2 of his first sworn statement filed 13 July 2013 in support of the Request, he would correct paragraph (2) of his said statement about MP Toara Daniel Kalo being present at Charlot Salwai's premises in Freshwota that in fact Toara Daniel Kalo was not present with them on that occasion, but he was aware that Toara Daniel Kalo had subsequently put his signatures to the document/Request after it was brought to him by MP Steven Kalsakau.

Bruno Leingkone was cross-examined. He was asked and he said MP Steven Kalsakau told him that MP Toara Daniel Kalo had signed the Request. He said after the signatures were obtained on 30 March 2013, he kept the Request Form with him with the signatures. He could not confirm when the signature of MP Thomas Laken was obtained has he had received signatures only.

He was asked when he spoke to MP Jonas James on 10 July 2013, whether Jonas James agreed for his signature to remain on the request he signed on 30 March 2013. He said on 10 July 2013 at 11.22am o'clock he called Jonas James. He met with him. He shook his hands. He was asked again whether Jonas James had ever signed the Request of 10 July 2013 which was lodged to the Speaker. He responded that Jonas James signed the Request at Charlot Salwai's Nakamal but Jonas James did not sign the Request of 10 July 2013. But he verbally confirmed his signature by saying yes at 3.00PM as he wanted to become a Minister of Government (namely, Minister of Internal Affairs).

He was challenged as to why he did not put everything he said in his sworn statements. He said it was in the way he put it.



He confirmed that is his first time in Parliament. He was not involved in the preparation of the Request. He was asked and he said one Emelia Buletare and Charles Bice prepared the Request. He was asked and he confirmed Jonas James signed the Request with the intention at the time that he wanted to oust the Government immediately.

It was suggested to him that 10 July 2013 was now some 4 months after Jonas James had signed the Request and it was no longer his intention to oust the Government immediately. He said it did not mean anything. He was asked and he confirmed that on 30 March 2013, they did not have 28 signatures they got 28 signatures on 10 July 2013. They got 27 signatures of Members of Parliament on the Request about June 2013. The Signatures were obtained step by step until June 2013 when Pascal Sebastien Iauko signed the Request making 27 signatures on the request.

Witness Bruno Leingkone was asked whether he was aware someone prepared papers to oust the Government, he stated he was aware and he said one Goerge Toa prepared them.

He was asked whether he knew that Jonas James did not agree to sign the Request of 10 July 2013. He accepted that he knew that Jonas James did not consent to sign it. He said they communicated with each other. Jonas James wanted to become Minister of Internal Affairs. He was asked as to who decided for a person to become a Minister. He answered Prime Minister. He was challenged that Jonas James knew that this witness cannot promise him that he will become a Minister. He responded that a person support the request and the motion for something.

He was further challenged as to what he meant whether he meant that for an important event as calling an extraordinary session of Parliament two (2) persons can talk and promise each other to become Minister. He responded that Jonas James agreed to sign. He was asked as to why he waited for so long and whether he knew Jonas James went to see the Speaker because his signature was used in the Request. He responded he heard on the radio. He was asked to read the statement of Jonas James. This witness did so. He was then asked as to why Jonas James made the statement to the Speaker. This witness said he did not know. It was put to him that he did make a statement on behalf of Jonas James that is not correct. He answered that what he said was correct.

He was re-examined. He was reminded about his evidence that he and Jonas James had discussions as they are from Malampa Province as Jonas James will take the position of Minister.

He confirmed he kept the signed Request with him bearing signatures of MP's who signed at Charlot Salwai's Nakamal at the time of signing, there were 20 signatures at that time. He was asked to clarify as to why he talked to Jonas James at Tropical Market but he did not give the Request for signing. He responded that all along they talked only. He said when they talked about the Request, there was no indication that Jonas James refused to sign the request. He has no reason to doubt Jonas James as his words to him confirmed his signatures on the Request.



Mr Steven Kalsakau is the third witness of the Applicants. He is a Member of Parliament. He made sworn statement in support of the Request. He said the content of his statement is true.

He was cross-examined. He confirmed he signed a request in March 2013. He said at the time they did not have the majority. They tried to build the number so that they can call Parliament to meet in an extraordinary session.

He confirmed what he stated in his statement that Toara Daniel Kalo, Christopher Emilee, Thomas Laken did not sign the request on 30 March 2013 at Salwai's Nakamal at Freshwota.

He said he took the request for Thomas Laken to sign. He was shown with a copy of the Request which was attached to the Speaker's Statement and he confirmed he gave that document to Thomas Laken with a space for signature but Thomas Laken did not put his signature on it. He signed on the other side, he said. He was asked and he said as soon as there was a signature it will be a bounding document made by a Member of Parliament.

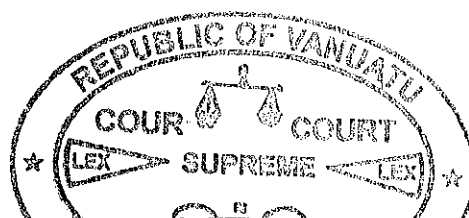
He was asked about Toara Daniel Kalo whether he was aware that Toara Daniel Kalo approached the Speaker because he did not consent for the use of his signature on the Request. He responded that he had obtained the signature of Toara Daniel Kalo on the request. He was asked again whether he knew that Toara Daniel Kalo went to see the Speaker to say that he did not agree for his signature to be used. Witness Steven Kalsakau responded he was not aware of this. It was suggested to him that there was no reason for Toara Daniel Kalo to approach to Speaker as he did. He responded that MP Toara is a member of his family. If MP Toaro Daniel said something different to the Speaker that is not a matter for him (witness) to correct.

It was suggested to him that if MP John Amos said he did not sign the Request, what would he say? Witness Steven Kalsakau responded that what is put for signature is of the constitutional right of Members of Parliament. They can decide of what they want.

It was suggested to this witness that if MP Toara Daniel Kalo, MP Arnold Prasad, MP Jonas James and MP John Amos did not agree that their signatures be used on the Request of 10 July 2013, he answered that he respected the decision of each member of Parliament. This witness was taken again to the Request of 10 July 2013. He was asked about the signature of Thomas Laken. He confirmed he was with Thomas Laken when he signed the Request.

He was then challenged that when Thomas Laken signed that piece of paper which was attached to the Request, where was the Request when Thomas Laken placed his signature on the piece of paper. Witness Kalsakau answered that when Thomas Laken signed the paper on which his signature appeared the request was with him (the witness). He was asked as to why he did not ask him to sign the request. He answered that Thomas Laken did not want for his signature to be with other signatures.

It was suggested to him whether what he meant was that Thomas Laken did not want him (witness) to use his signature. He answered in the negative (No).



*[Handwritten signature]*

He was asked again if the request was lodged Thomas Laken's signature must be with other signatures on the request. The witness answered that Thomas Laken requested that. He was asked again whether Thomas Laken signed a piece of paper like this and this witness confirmed. It was put to this witness that he can use the signature on the paper for anything. Witness Kalsakau answered that Minister Thomas Laken wanted like that. His signature will be used for that purpose only. He said Thomas Laken signed the paper sometime in April 2013.

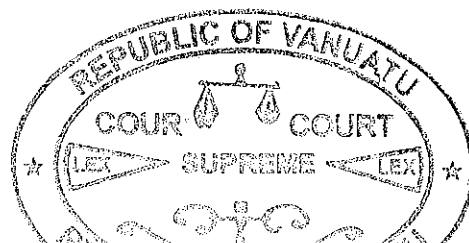
Witness Kalsakau was taken back to the meeting at Nakamal of Charlot Salwai. He was asked about which day the request was signed on the same day the Prime Minister was removed or on the day Speaker Boedoro was elected Speaker. He could not recall about the day. He said the content is the same but the date was changed. He was asked and he said the Request was addressed to Speaker Boedoro. He was challenged on the fact that when the Request was signed on 30 March 2013, Speaker Boedoro was not yet elected Speaker of Parliament as Mr Boedoro became Speaker two weeks after the elections of the Prime Minister. He said 20 persons signed the request on 30 March 2013 at Salwai's Nakamal. He said others signed after and may be not at the same time. He was sure that the content was the same but the date was changed.

He was shown again the request and it was put to him that it was not the letter that everyone had signed as what he was shown was addressed to Boedoro whereas the letter he said 20 MP's have signed was on 30 March 2013, and Boedoro was not yet Speaker. Witness Kalsakau confirmed the suggestion put to him as they built up the numbers until they got 28 signatures they lodged the Request letter to the Speaker.

He confirmed he was an MP for 12 years. He is an experienced MP. He was involved in some political negotiations. He was asked and he confirmed that politicians changed their minds often and it is their constitutional rights and he knew that. He was asked and he said it is a constitutional right for an MP to change minds any second or minutes. But to change the signature, he must change it in Parliament, he said.

It was put to him that if that was his thinking, the document they prepared in April 2013 can be used in July 2013. The witness agreed and said the confirmation will be in writing or verbal as it is the right of any member of Parliament.

He was asked and he denied he was aware of a document prepared by or for the Leader of Opposition asking other MP's (here Jonas James) to sign a pre draft confirmation of his (Jonas James) signature. It was put to him that it was a very good idea. The witness responded that if Jonas James agreed with it he could sign it that is his constitutional right. He was asked and he said Toara Daniel Kalo signed the request by end of April 2013. He was asked he said when Toara Daniel signed the Request if there was enough members of Parliament in support of the request the request would already be lodged. He was asked he said when he asked Toara to sign the request, Toara Daniel questioned him. They talked through the motion for more than half an hour, then, Toara Daniel signed the Motion. He said he told Toara Daniel that if they have the numbers, they will lodge the motion. He said Toara Daniel asked him whether they have the number at the time he went to see him and also on other occasions as he told Toara that they did not have the requisite number as yet.



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He was asked he confirmed he spoke to Toara Daniel Kalo on 12 July 2013. He confirmed that this was after that the request was lodged. When asked whether he was aware of Toara Daniel telling the Speaker he did not sign the request, the witness said he heard it on the radio. He was asked about the letter of four (4) members of Parliament attached to the statement of the Speaker Boedoro. He said he did not see them. It was put to him that each of the 4 MP say that they did not give consent for use of their signature. They made statement to the Speaker to that effect and Toara Daniel Kalo who is one of his friends is one of these 4 MPs. He responded that Toara Daniel is a friend and Family. It is his responsibility.

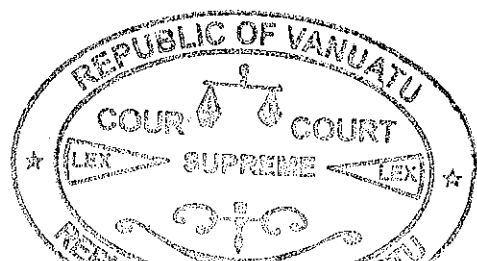
It was put to him that on 12 July 2013 he had spoken to Toara Daniel Kalo. The witness confirmed this. He was asked if he has spoken to Toara Daniel Kalo on 10 July 2013. Witness Kalsakau answered in the negative (No). He was asked whether he assumed that Toara Daniel Kalo agreed for his signature to be used. He responded they have talked to everyone until 12 July 2013. He said since Toara Daniel Kalo signed the document, he did not contact him, it was not wrong. There was no withdrawal.

It was finally put to him that he has never got back to Toara Daniel Kalo and others after 3 months they put their signatures on the Request to ask if they are still with the Applicants on the Request. He responded he has still talked to Toara Daniel Kalo.

In his re-examination, he confirmed he saw Toara Daniel when he signed the motion. He still talked to him about the number. He clarified that on 5 July 2013, Toara Daniel Kalo was sworn in as Minister of Justice after they talked about the number on the Request.

Tony Nari was the 4<sup>th</sup> witness for the Applicants. He is a MP. He made a sworn statement. He said he signed a request for an extraordinary session of Parliament on 30 March 2013. They signed the request at Charlot Salwai's Nakamal at Freshwota. The Request was undated until the requisite number of signatures before it was dated and lodged. He said before the lodging of the Request, they are asked to verify from other MP's who had co-signed that request on 30 March 2013 whether they still maintained their consent or support for the Request of extraordinary session of Parliament. He said he was responsible to approach Amos Vacher who was overseas in the Solomon Islands. He said he did exchange various text messages with him from Solomon Islands where John Amos did reaffirm his consent on the Request as he has already signed. He communicated with John Amos, he did send a hand written letter from Solomon Islands confirming his signature on the Request for extraordinary session of Parliament and that letter was addressed to the Leader of Opposition.

Witness Tony Nari was cross-examined. He confirmed he signed a request on 30 March 2013 at Charlot Salwai's Nakamal at Freshwota. The request was sent to the Speaker Boedoro although he conceded that on 30 March 2013, Mr Philip Boedoro was not yet Speaker of Parliament. He said he was responsible to contact John Amos Vacher while he was overseas. He said he contacted MP John Amos through text messages. The text messages are in his mobile phone. Mr John Amos Vacher sent a hand written letter to Hon. Ham Lini, Leader of Opposition.



He was asked he said he was not aware that John Amos Vacher signed a statement to the Speaker. He confirmed he signed a Request on 30 March 2013, when George Andre Wells was Speaker of Parliament.

Mr Paul Telukluk was the 5<sup>th</sup> witness of the Applicants. He is a MP. He filed a sworn statement. He was present at Salwai's Nakamal when they signed the Request on 30 March 2013. They built up the number. He was aware that Toara Daniel Kalo, Christopher Emelee and Jonas James did sign the Request at a later date. Prasad Arnod confirmed to him that his signature remains on the Request on 12 July 2013. Prasad Arnold told him that the reason he did sign the Request was that the Government did not have a majority anymore and his signature brought the number on their side to 28. He recalled he went to see Arnold Prasad sometime in April or May 2013 at his residence in Freshwota about him adding his signature to the request for an extraordinary session. He told Arnold Prasad that 27 members of Parliament have signed the Request and he will be the 28 and this was a good majority. He said Arnold Prasad agreed to sign and he signed on a blank sheet of paper which he told him that he would attach his signature to the said Request to convene an extraordinary session of Parliament. Arnold Prasad signed the request just once and it was solely for the purpose of attaching it to the Request date 10 July 2013.

Paul Barthelemy Telukluk was cross-examined. He confirmed his evidence that he obtained the signature of Arnold Prasad on the blanked paper after he and Prasad talked about the request. He said at that time there were 27 signatures of MPs on the Request. He told Arnold Prasad that if he signed the paper, he would be the 28<sup>th</sup> signing the request. He was asked and he said when they signed the request in March 2013, Arnold Prasad was not present. He said Arnold Prasad told him that he will sign the paper when 27 signatures are obtained on the request and he (Arnold Prasad) will be the 28<sup>th</sup> signatory.

He was asked and he said he was not aware that Arnold Prasad made a statement to the Speaker he did not want his signature to be used on the Request of 10 July 2013. He was asked and he confirmed he approached Arnold Prasad to sign to become the 28<sup>th</sup> Signatory. He was asked and he confirmed that they signed the Request on 30 March 2013 at that time it was undated and the Speaker was George Wells. But the Request of July 2013 was made to Speaker Philip Boedoro.

He was challenged as to the signature attached to the Request he answered that these documents are still valid as they are yet to be used. He confirmed he talked to Arnold Prasad on 12 July 2013. He confirmed that he talked to Arnold Prasad as he is in partnership business with Arnold Prasad and one Yao.

He was asked again and he confirmed that if there were 27 signatures, he would be the 28<sup>th</sup> signatory. He was asked when he obtained Arnold Prasad's signature whether he showed him the Request. He responded that they are Chiefs and as Chiefs they rely on their words.

Witness Paul Telukluk was re-examined. He reconfirmed that Arnold Prasad put his signature on a plain paper as he wanted to be the 28<sup>th</sup>. That paper was attached to the Request. He reconfirmed that Arnold Prasad's signature was on the Request of 10 July 2013.



*[Handwritten signature]*

Ham Lini Vanuaroroa was the last witness of the Applicants. He is the Leader of Opposition in Parliament. He filed a sworn statement. He confirmed the content of it as truthful. He provided a hand written letter addressed to him as Leader of Opposition by MP John Amos Vacher dated 2 July 2013. The letter of John Amos is to confirm his signature on the Motion of No Confidence which was to be deposited on Thursday 4 July 2013.

Witness Ham Lini was cross-examined. He confirmed his evidence that he signed the Request on 30 March 2013. Some Members of Parliament signed the Request on 30 March; others signed that request after that date and on different dates. He was asked whether the Document he attached to his statement is the Request. He answered the document reflect the normal process to build up the numbers for the Motion. He was asked and he accepted that Speaker Boedoro was elected on 6 April 2013. They signed the document before Boedoro is elected Speaker. But it was the same motion that they signed and lodged to Speaker Boedoro.

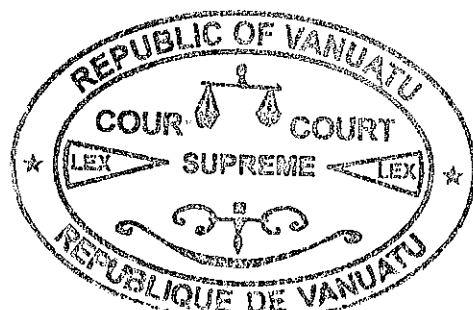
It was put to him that the signatures obtained on 30 March 2013 were on the Request but other signatures were attached to it. He accepted this as a practice. He added that it happened many times. He was asked whether he was aware that after the request of 10 July 2013 was lodged, 4 MPs made statements to the Speaker that they did not sign the Request. He answered he was aware through the news media. He was asked and he said he saw the statements signed by the 4 MPs to the Speaker on 11 July 2013. He was challenged as to whether the 4 MPs can make the Statements to the Speaker that they did not agree with the Request. He answered that as far as he knew, they can withdraw their signatures through Parliament but not in a letter or statement to the Speaker.

He was asked about Arnold Prasad putting his signature on a plain blank paper. He answered that this might be so at Mr Prasad's own request so that if there were already 27 signatures Prasad will be the 28<sup>th</sup>. He was asked about the signature of Thomas Laken which was on a separate plain paper, he answered that this was at Mr Laken's own request as he is a Minister of the Government. He said Mr Laken was afraid that he will be sacked.

That is the end of evidence of the Applicants.

### **SUMMARY OF EVIDENCE OF THE SECOND RESPONDENT – SPEAKER OF PARLIAMENT**

Speaker Philip Boedoro gave evidence to the following effect. He said he is the Speaker of Parliament having held this position since April 2013. On or about 10 July 2013, his office received a request for an extraordinary session of Parliament from some members of Parliament from the Opposition. Together with the Request was a motion of No Confidence against Prime Minister Moana Kaltokai Kalosil Carcases. He stated that on the face of it the Request appeared to have been signed by 28 members of Parliament. He attached a copy of the Request to his statement and marked as "PB1". He stated that soon after that he received the request four (4) members of Parliament presented themselves before him in his office. They were MP Arnold Prasad, MP Toara Daniel Kalo, MP John Amos Vacher and MP Jonas James.



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He stated that the four (4) MPs in his presence, voluntarily signed statements saying that at no time did they each signed a request for the summoning of Parliament for an extraordinary session of Parliament. He attached copies of the statements of the four (4) MPs as "PB2" to his statement.

He stated he did not ask the four MPs to appear in his office and signed their respective statements. He understood the four MPs came to his office voluntarily. He understood the four (4) MPs were asked by the Government to sign the statements which they did before him. He stated he has also considered the fact that MP George Andre Wells was suspended from Parliament by motion No.14 of 2013. The suspension of MP George A. Wells was approved by 32 votes in favor during the First extraordinary session of Parliament on Saturday 6<sup>th</sup> April 2013.

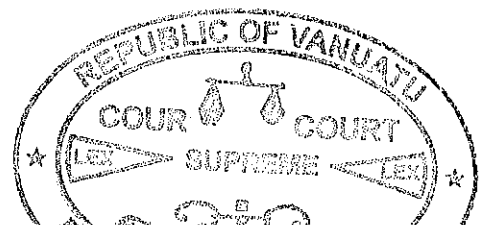
He stated that with respect to MP Pascal S. Iauko, while he has been elected, he is yet to be formally sworn in as a Member of Parliament and once he is sworn in he will then sign the roll of Parliament.

He stated that having received the statements from the four MPs, he then considered the request and the motion served in his office and having received the statements of the Four MPs, he came to the conclusion that the request and the motion against the Prime Minister was not in order.

He stated he wrote a letter to Ham Lini Vanuaroroa, Leader of Opposition to inform him of his decision dated 11 July 2013. He attached as "PB3" the statements of the Four MPs to him to his letter to the Leader of Opposition of 11 July 2013. Finally, the Leader of Opposition Ham Lini Vanuaroro, responded to his letter in a letter dated 12 July 2013 attached as "PB4".

Witness Philip Boedoro was cross-examined. Mr Philip Boedoro is a Member of Parliament for over 13 years. He was Deputy Speaker in March 2013. MP George A. Wells was Speaker of Parliament in March 2013, while he was Deputy Speaker.

He was asked and he explained that his role and responsibility as a Speaker are to uphold the Constitution of the Republic of Vanuatu, Standing Orders of Parliament, to remain neutral and serve both the Government and Opposition members of Parliament. He was asked and he agreed that to uphold the Constitution means that if the Constitution requires him to do something, he has to do it. Likewise if the standing orders of Parliament require him to do something, he must do it. He was asked and he agreed he administered Parliament, controlled debate on the floor of Parliament and he must remain neutral. If there was request from the Government or Opposition his duty is to serve both of them. No Member of Parliament can control him as a Speaker. He was asked and he said if there was a Request or a Motion he made written Response. In respect to the Request of 10 July 2013, he made a written response to the Leader of Opposition. As to announcement to the Republic from Parliament, he agreed that there are only two (2) persons to make the announcements. He added the announcement of the Request of 10 July 2013 he made them through the media when he announced that "Having considered the Request of 10 July 2013, he said the Request was not in order". He said he did it in the afternoon after he responded to the Leader of Opposition on 11 July 2013. He was asked and he confirmed that following documents are attached to the Request of 10 July 2013:



1. Motion to reinstate George Andre Wells;
2. Notice of Motion of No Confidence against Prime Minister Moana Carcasses;
3. Motion of No Confidence against the Prime Minister
4. Motion to remove the Hon. Philip Boedoro as Speaker

He was asked if something was wrong with the signatures on the Request. He agreed and said in addition to the four MPs who made statements to him in his office, there was also signatures from a suspended Member of Parliament and a newly elected MP who was not yet formally sworn in as a Member of Parliament.

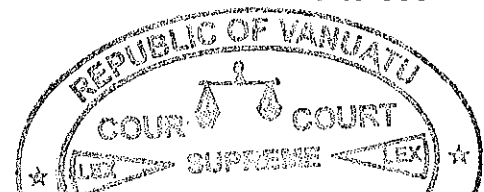
He was asked when the Speaker received the Request the Speaker must go through the signatures pursuant to order 14 of Standing Orders of Parliament. He answered although it was not in Order 14 of the Standing Orders but he said it was the duty of the Speaker to consider and analyse the document and decide.

It was put to him that if Standing Orders do not give the Speaker the power to scrutinize signatures the Speaker has no duty to do so. He responded that he disagreed but he agreed when asked that the Standing Orders must follow the Constitution. It was put to him that the Standing Orders do not give the Speaker power to check the signatures when he received the Request. He said he did not agree. It was put and he denied that on 10 July 2013 when he received the request other person came and influenced him.

It was put to him and he accepted that the four (4) statements signed by the four (4) MPs are not documents produced by the Parliament of Vanuatu. He was asked and he said on 10 July 2013, in the afternoon, MP Ham Lini Vanuarorua and his group came and lodged their Request. He said they discussed and he told them he would look through the Request and responded to it and informed them of his decision.

He was asked if John Amos, Toara Daniel Kalo, Arnold Prasad and Jonas James were there too. He answered no they were not there. But the four (4) MPs came to his office 1 hour after Ham Lini and his group left his office. He was asked and he said at that time, he did not yet make any announcement. He was asked and he said MP Jonas James came first to his office. It was put to him and he denied that MP Jonas James came with his letter. He said MP Jonas James came to check if his signature was on the Request. He was asked again and he said he did not make any announcement as yet. He was asked again if Jonas James came with his letter (statement). He said MP Jonas James explained to him that he did not sign the Request. Jonas James told him that he will make a letter with others who did not sign the Request. He was asked and he said MP Arnold Prasad came in his office almost the same time with others (Toara Daniel and John Amos). He said he signed the Statements of the four MPs with the Four MPs to attest to their versions of facts. It was put to him and he said he signed the statements because he believed their versions of facts.

He was challenged about paragraph 1 of his statement when he said the motion or request is not in order in process and substance. It was put to him the substance of request is for Parliament. He agreed. It was also put to him that even if he was concerned with the process of signatures on the Request. It was a matter for Parliament. He answered No and he added that because one MP came to see



*[Handwritten signature]*



him as a Speaker and told him that he did not sign the Request so he said he considered that. It was put to him and he denied that on 10 July 2013, when Jonas James, Arnold Prasad, John Amos Vacher and Toara Daniel Kalo came in his office, he has already prepared the letters. He was asked and he said he received the four letters about 4.45PM – 5.00PM.

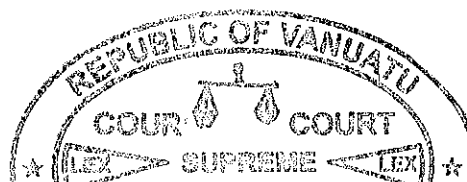
It was suggested to him and he denied that before Jonas James, Arnold Prasad, John Amos and Toara Daniel Kalo came to see him, he had phoned each of them. He was asked to explain the fact that within 1 Hour interval before he made official announcement, how the Four MPs will come. He responded that when MP Ham Lini and his group came to his office, people were watching them. There were speculations around them. So he said after Ham Lini and his Group left, the Four (4) MPs came to his office. He was asked and he accepted that the statements of the Four (4) MPs are in similar terms. He was asked and he said the Four MPs signed their letters in the conference room of Parliament. He was asked and he denied his involvement in the draft preparation of the letters. It was put to him and he denied that it was his belief that as long as the Four MPs signed he will make a ruling that the Request was not in Order. It was put to him that even if the signatures of the Four MPs are on the Request, it is still acceptable apart from the status or Standing of Pascal S. Iauko and George A. Wells. He said this was also part of the reasons of his ruling of 11 July 2013.

He was referred to paragraph 1(a) of his ruling of 11 July 2013. He was asked to read it. Mr Philip Boedoro read it. He was asked to explain what he meant when he referred to "Forgery signatures of several members of Parliament in the Government of Hon. Prime Minister Moana Carcasses..." He responded the signatures of the Four (4) MPs came on the Request for different purposes and at different times and reproduced on the Request.

He was asked to explain his previous evidence to the effect that he said there is nothing in the Standing Orders of Parliament for the Speaker to scrutinize the signatures on the Request and so he said the Four (4) MPs came to see him and told him that they did not sign the Request. He accepted that that was the position and he did not scrutinize the signatures. As to the process of the Request, it was put to him and he accepted that he looked at the Request lodged if there are signatures. He confirmed that the Request was lodged pursuant to Article 21(2) of the Constitution. He accepted that the Majority of Members of Parliament of 52 is 27. It was suggested to him that he then saw the signatures of Pascal S. Iauko and George A. Wells. He concluded that there were 22 signatures only. There was no majority.

He was asked again about paragraph 1(a) of the letter of 11 July 2013 containing his ruling refusing the Request as not in order when he referred to "Forgery of signatures". He accepted that when he referred to "Forgery of signatures" he said that Four (4) MPs told him that their signatures were used for different purposes. He was asked and he confirmed he read the Judgment of the Supreme Court referred to in his ruling of 11 July 2013; he has concerns and so he exercised his duty as Speaker to protect the integrity of Parliament. He was also asked and he confirmed he has concerns about the costs.

Witness Philip Boedoro was re-examined. He clarified that Prime Minister Moana Carcasses was elected on Saturday 23 March 2013. On his letter of 11 July 2013 when he mentioned the names of the Four (4) members of Parliament – he talked



*[Handwritten signature]*

about their signatures on the Request of the extraordinary session of Parliament of 10 July 2013. He was referred to his answers on the issue of process. He clarified that as Speaker he must ensure that everything is appropriate before he could take the request to Parliament.

That is the evidence of the Second Respondent Speaker.

### **SUMMARY OF EVIDENCE OF THE INTERESTED PARTIES.**

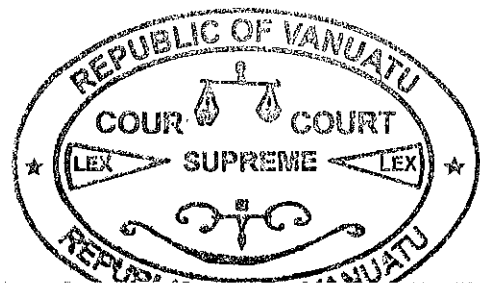
Jonas James is the First interested party. He gave evidence to the following effect. He is a Member of Parliament. He filed a sworn statement. He stated a request for an extraordinary session of Parliament dated 10 July 2013 was deposited with Speaker of Parliament. He noted that page 3 of the letter of request shows his signature and name however, he said he did not personally sign the letter of request and/or give his consent for the letter of request. He stated the signature page used in the letter of request looks like the one he signed back in or about March 2013 when the new Government has just formed but when the Hon. George Andre Wells was still the Speaker of Parliament. He stated the Motion was never lodged with the Hon. George Andre Wells, Speaker of Parliament at that time.

He stated when the Hon. George Andre Wells was removed as Speaker of Parliament he viewed that Motion as no longer valid. He stated the members of Opposition through Matai from Pango, George Toa, John Tao, approached him a number of times to support the opposition to remove the present Government. He said they would give him a blank paper for him to sign but he always refused to sign as he wanted to see who and how many have signed a motion, if there was any.

He stated on the 2<sup>nd</sup> of July 2013 the members of the Opposition approached him again and gave him a letter for him to sign to the effect that he confirmed his signature in support for the current motion to be officially lodged this week but he refused to sign the letter. He annexed a copy of the letter and marked "JJ2" to his statement.

He stated he was surprised when he was told that his signature was in the letter of Request because he has not signed that letter and did not give consent for his signature to be used. He stated that the Opposition members are friends but they are not allowed to use his signature without his authorization. He said his signature is his identity and it is not allowed to be used without his consent.

He said he told the Speaker that he did not sign the Request for an extraordinary session and signed a statement attesting to that statement signed before the Speaker of Parliament on 10 July 2013. He confirmed he did not sign the letter of Request and did not support the motion or the letter of Request to convene an extraordinary session of Parliament. Referring to his statement when he said the members of the Opposition gave him a letter to sign he said Bruno Leingkone gave him that letter to sign. He refused to sign that letter. He said when Bruno Leingkone talked to him at Tropical Market, Mr Leingkone has forgotten that he (Witness) was the First Deputy Speaker. He said he has nothing to do with the Request.



A handwritten signature or mark, possibly initials, located at the bottom right of the page.

He said he told Mr Bruno Leingkone to go ahead with their request they will see later on what happened.

Witness Jonas James was cross-examined. He was asked he confirmed he signed the Request at the Nakamal of Charlot Salwai with others. He confirmed at that time, Parliament had just elected new Prime Minister Carcasses. He said at that time he was picked up from his house. He came and signed the paper. They took him back to his house. He said he did not know what happened but he accepted they signed a Request for an extraordinary session of Parliament. He confirmed Bruno Leingkone talked to him at the Tropical Market on 10 July 2013. He was asked and he confirmed that he could not come back to his signature because he is now Deputy Speaker of Parliament.

He was referred to the statement he signed to the Speaker and the paragraph referring to forgery of signatures he accepted and confirmed his evidence that his signature was affixed to a different document and for different purposes. It was put to him and he accepted that he signed the document once. He was asked and he confirmed that on 10 July 2013, he went to Parliament and signed a statement to the Speaker at the Conference room of the Speaker after he has information at Tropical Market.

In his re-examination, Jonas James clarified that he became First Deputy Speaker at the time the Prime Minister changed.

Toara Daniel Kalo is the Second Interested party. He gave evidence to the effect that he is a Member of Parliament. He filed a sworn statement. He relies on it. Toara Daniel's evidence is to the following effect a request for an extraordinary session of Parliament dated 10 July 2013 (the "letter of request") was deposited with the Speaker of Parliament. Annexed and marked "TK1" is a copy of said document.

He notes that page 2 of the letter of request shows his signature and name however he did not personally sign the letter of request and/or give the consent for his signature to be used for the letter of request.

He believes that the signature used in the letter of request came from a motion he signed it on or about end of March or beginning of April of 2013 when he signed a motion but there was not enough numbers to form a new Government.

When he heard that his name and signature were used in the request letter, he went to Parliament to see the Speaker.

He told the Speaker that he did not sign the request for an extraordinary session and signed a statement attesting to that on the 10<sup>th</sup> of July 2013. Annexed and marked "TK2" is a copy of the statement signed before the Speaker of Parliament on the 10<sup>th</sup> of July 2013.

He confirmed he did not sign the letter of request and did not support the motion or the letter of request to convene an extraordinary session of Parliament.

Toara Daniel Kalo was cross-examined. He confirmed he knew MP Steven Kalsakau and other members of Parliament.



He talked to MP Kalsakau and other members of Parliament. He was asked and he said at the time he had discussions with MP Steven Kalsakau, it was just after the opposition toppled the Government of Sato Kilman. He was asked and he confirmed he signed a motion but not a request because at the end of March the Government was newly formed. Some MPs were not in agreement with the formation of the present Government he said. There was a possibility of a change of Government. He said in the discussion Steven Kalsakau suggested to him that tomorrow if he wanted to be part of the Government he must sign the motion. He said he then signed it. He said there were 21 or 22 signatures only. He said the next day when Parliament met, he saw that the motion was an attempt motion. He said it was failed. He was showed and he confirmed his signature on the paper he signed at his house.

He was referred to his statement in the paragraph he said "Forgery signatures". It was put to him that Steven Kalsakau came to his house and obtained his signature once only. He confirmed this.

Arnold Prasad is the Third Interested Party who gave evidence in this proceeding. He gave evidence to the following effect. He is a Member of Parliament and an Interested Party in this proceeding. He said a request for an extraordinary session of Parliament dated 10 July 2013 (the "letter of request") was deposited with the Speaker of Parliament. Annexed and marked "AP1" is a copy of said document.

He notes that page 4 of the letter of request shows his signature and name however he did not personally sign the letter of request and/or give the consent for his signature to be used for the letter of request.

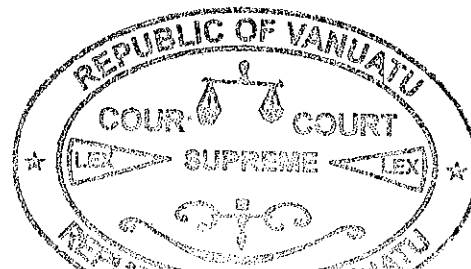
He does remember a discussion he had with the Honorable Paul Telukluk in or about end of March/early April, it was some time right after the present government was formed.

The Honorable Paul Telukluk approached him and spoke to him about joining the Opposition to form a new government.

He was the Second Deputy Speaker for the former Government and continued to hold this position in this current Government. He recalled when this current Government was deciding who to take what position in the new government, the question came up about Honorable Havo Moli was to keep his position as First Deputy Speaker. He tried to defend from being terminated from his position as First Deputy Speaker but was not successful. He therefore rationalized that in order to keep his position he would have to give his support to whoever has the support of the majority of the members of Parliament.

When Honorable Paul Telukluk asked him to join the Opposition to form a new government in or about late March/early April, he told him that if the Opposition has 27 numbers, which is the majority of members of Parliament able to form a new government, then he can go in as the 28<sup>th</sup>.

He reasoned that because the opposition had the majority of numbers, the Government would already be broken by then therefore he could go in and be the 28<sup>th</sup> Member of Parliament to form the new government.



Honorable Paul Telukluk then told him he would require him to sign a blank paper to show that this was what they agreed on. He said that the paper would be evidence to show the others because otherwise they would not believe him and so therefore he signed the blank paper.

He signed the blank paper to show that if the Opposition had 27 Members of Parliament to form a new Government, then he would give his support as the 28<sup>th</sup> member.

He did not sign the letter of request but believe that his signature for the agreement he had with Honorable Paul Telukluk outlined above in paragraphs 7 and 9 is what has been attached as page 4 of the letter of request.

It was after the letter of request was deposited with Speaker of Parliament that he became aware of his signature being used in the letter of request.

He told the Speaker that he did not sign the request for an extraordinary session and signed a statement attesting to that. Annexed and marked "PA2" is a copy of that statement signed before the Speaker of Parliament on 10<sup>th</sup> July 2013.

He confirms he did not sign the letter of request and did not and do not support the motion or the letter of request to convene and extraordinary session of Parliament.

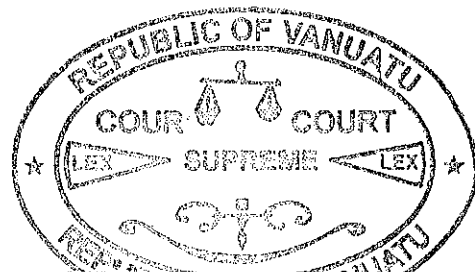
Arnold Prasad was cross-examined. He confirmed his evidence that he knows Paul Telukluk as he and Paul Telukluk and another person named Yao are shareholders in a company. He confirmed he signed a blank paper. He confirmed that before he signed the blank paper he talked to Paul Telukluk his signature will be 28<sup>th</sup> signature. He explained 27 is the majority and his will be the 28<sup>th</sup> as he was a Deputy Speaker. He confirmed he put his signature in the circumstance described. He repeated as he is a Deputy Speaker his signature will be the 28<sup>th</sup> signature.

Mr Christopher Emelee filed a sworn statement on 18 July 2013 to the following effect. He is a Member of Parliament. He is interested in this proceeding because of the use of his name and signature in the request for an extraordinary session of Parliament dated 10 July 2013 (the "letter of request") that was deposited with Speaker of Parliament. Annexed and marked "AP1" is a copy of said document.

He notes that page 2 of the letter of request shows his signature, which looks like the way he signs and name however he did not personally sign the letter of request and/or give the consent for his signature to be used for the letter of request.

He believes that the signature used in the letter of request came from a motion he signed in or about March 2013 when he signed a motion not to remove the Honorable George Andre Wells as Speaker of Parliament at that time.

He went to Fiji on the 7<sup>th</sup> of July 2013 and became aware that his signature was in the letter of request from Willie kalo who called him on Thursday 11 July 2013 at 6am Fiji Time.



He came back to Vanuatu on that day and went to see the Speaker of Parliament on Friday morning to see the letter of request. The signature looks like his signature but he did not sign the letter of request. The signature also appeared big and he does not sign that big. He confirms he did not sign the letter of request and did not and does not support the motion or the letter of request to convene an extraordinary session of Parliament.

Mr Christopher Emelee was not cross-examined on his statement as he was not in Court at the time of the Trial.

That is the end of evidence of the interested parties.

### **DISCUSSION ON EVIDENCE: FINDINGS**

It is a fact that on 10 July 2013 the applicants lodged a Request letter to the Office of the Speaker of Parliament, Hon. Philip Boedoro, to summon Parliament for an Extraordinary Session of Parliament on 18 July 2013.

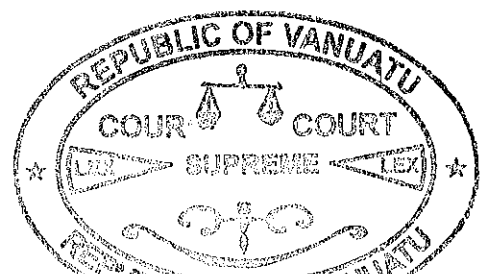
It is a fact that the Request was attached with the following documents:

- Motion to re-instate MP George Andre Wells
- Notice of Motion of Non Confidence in the Prime Minister Moana Carcasses Kalosil.
- Motion of No Confidence against the Prime Minister Moana Carcasses Kalosil
- Motion to revoke Speaker Philip Boedoro

It is a fact that when the Applicants lodged the Request at the office of the Speaker on 10 July 2013, they had discussions with the Speaker; the Speaker told them that he would look at the request and informed them of his decision on the Request. The Speaker did so in his letter of 11 July 2013.

It is a fact that the Speaker received a Request for an extraordinary session of Parliament to meet on 18 July 2013. On its face the Request before the Speaker was made up of a letter with attachments. The Request letter is on the First page with reference to relevant Constitutional provisions and Standing orders of Parliament, the subject matters and purposes of the Request and its likely duration.

The first and second attachments contain a list of names and signatures of the following Members of Parliament: Hon. Ham Lini Vanuaroroa, Hon. James Bule, Hon. Bruno Leingkon, Hon. Charlot Salwai, Hon. Steven Kalsakau, Hon. Paul B. Telukluk, Hon. John Lum, Hon. Havo Molisale, Hon. Samson Samsen, Hon. Tony Nari, Hon. Hosea Nevu, Hon. John Vacher Amos, Hon. Christopher Claude Antoine Emelee, Hon. Toara Daniel Kalo, Hon. Meltek Sato Kilman Livtunvanu, Hon. Dunstan Hilton, Hon. Isaac Bongbong Amariliu, Hon. Alfred Rollen Carlot, Hon. Jonas James, Hon. Ton Stephen Ken, Hon. Kalvau Moli.



*[Handwritten signature]*

It is a fact that the name of Hon. Arnold Thomas Prasad appears at page 3 of that list but there is no signature.

But the name of Arnold Prasad appears again this time with a signature on a separate blank paper which was attached to the request.

On the next blank paper attachment, the name and signature of Hon. Thomas Laken appear.

On the next blank paper attachment, following names appears: Hon. George Andre Wells, Hon. Richarch Namel, Hon. Richard Mera, Hon. Thomas Laken, and Hon. Morkin Iatika Steven. But one signature only appears with the name of Hon. George Andre Wells.

On the next blank paper attachment, following names and signatures appear: Hon Willie Jimmy Tapangarua, Hon. Morkin Iatika Steven. But the name of Hon. Richard Namel appears again but without a signature.

On the next blank paper attachment, the name and signature of Hon. Pascal Sebastien Iauko appear with his signature.

On the last blank paper attachment the name and signature of Hon. Marcellino Pipite appear.

On its face the Request has 28 signatures of which seven names and scattered signatures are obtained on blank papers attached to the Request.

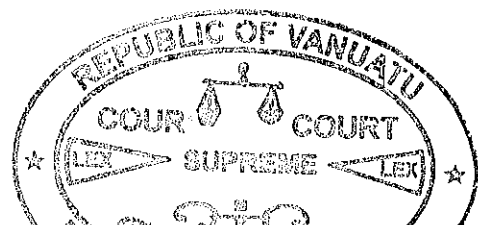
It is a fact that on the day after the Request was lodged, MP Jonas James went to the Parliament to check whether his signature was on the Request as he has information from his discussions with MP Bruno Leingkone at Tropical Market about the Request in the early part of 10 July 2013.

It is also a fact that MP Bruno Leingkone gave MP Jonas James a drafted letter addressed in the name of the leader of opposition for Mr Jonas James to sign to confirm his signature and support to the Requests of 10 July 2013.

It is a fact that MP Jonas James refused to sign the said document. It is a fact that MP Jonas James made a statement to the Speaker that he did not sign the Request of 10 July 2013. It is a fact that he had put his signature on an undated document at Charlot Salwai's Nakamal at Freshwota sometimes at the end of March 2013. That signature is now used without his consent or authorization on the Request to the Speaker dated 10 July 2013. In such a circumstance, the signature of MP Jonas James cannot be counted in favour of the Request.

It is also a fact that just about the same time on 10 July 2013, MP Toara Daniel Kalo went to see the Speaker as he was informed that his name and signature are used on the request lodged to the Speaker on the same day.

The Court found that Mr Toara Daniel Kalo had signed a document at his house at Beverly Hills, area, Port Vila, towards the end of March or early April 2013. That document was given to him by MP Steven Kalsakau. It is found and accepted that that signature was used on the Request lodged to the Speaker on 10 July 2013.



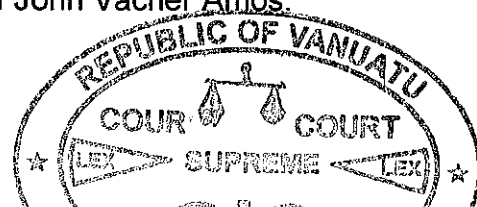
Handwritten mark resembling a stylized signature or initials.

It is found and accepted that Toara Daniel Kalo's signature on the Request of 10 July 2013 was used without his consent or authorization as he testified in Court. Mr Steven Kalsakau admitted that he did not obtain Mr Toara Daniel Kalo's confirmation of his name and signature on the Request before the Request is lodged on 10 July 2013. Mr Steven Kalsakau contacted Mr Toara Daniel Kalo on the 12<sup>th</sup> of July 2013 three days after the Request was lodged. On the evidence, the signature of Mr Toara Daniel Kalo on the undated document of 30 March 2013 does not reflect his consent or authorization for the use of his name and signature on the Request of 10 July 2013. In such a circumstance, Mr Toara's signature cannot be counted for the Request.

The Court accepts the evidence of Arnold Thomas Prasad that he had signed a blank paper given to him by MP Paul Barthelemy Telukluk at his house at Freshwota to the effect that as he is Deputy Speaker of Parliament, his signature will be counted only if there were already 27 signatures on the Request and he will be the 28<sup>th</sup>. Arnold Thomas Prasad confirmed his intention to that effect in his oral testimony that he consented to sign a blank paper and that his signature on that blank paper would be added as the 28<sup>th</sup> signatures in favour of the Request. That is the evidence of Mr Prasad's consent or authorization that his signature on the blank paper be used in the Request of 10 July 2013. Therefore, contrary to his statement to the Speaker dated 10 July 2013, Mr Prasad's signature on the blank paper which was attached to the Request of 10 July, 2013 is counted for the Request lodged on 10 July 2013 at the office of the Speaker.

It is a fact that MP John Amos Vacher's signature appears on the Request lodged to the Speaker on 10 July 2013 by the Applicants. It is a fact that after the Request was lodged, MP John Vacher Amos went to see the Speaker and made a statement to the Speaker to the effect that after he has perused the documents that were lodged on Wednesday afternoon of 10 July 2013 by the Leader of Opposition group in Parliament pertaining to the calling of an Extraordinary Session of Parliament and a motion of No Confidence against Prime Minister Hon. Moana Carcasses Kalosil and while he acknowledged and noted that his name and signature were also included in the said documents, he categorically stated that his signature was affixed to a different document and for a different purpose and the attachment of his signature to the current document that is a calling of Parliament dated 10<sup>th</sup> July 2013 has been done so without his knowledge or consent. It is a fact that John Vacher Amos did not sign the Request Letter calling for the summoning of an extraordinary session of Parliament. Mr Philip Boedoro, Speaker of Parliament gave evidence to that effect. Contrary to this, Mr Tony Nari gave evidence that he was on regular contact with John Vacher Amos as he was in the Solomon Islands. Mr Nari testified that John Amos confirmed his signature on the Request of 10 July 2013. Mr Nari referred to a hand written letter of John Vacher Amos dated 2 July 2013 which was addressed to the Leader of Opposition in Parliament. Mr Ham Lini Vanuaroro provided that hand written letter to the Court while he was given evidence. The letter was exhibited and marked "A9". Mr John Vacher Amos did not testify. The Court is confronted with two opposing versions of facts reflecting two intentions of the same person at different times. As a matter of common sense and logic the more recent intention of the two versions must be accepted as the intention of John Vacher Amos.

In this case, the evidence of Mr Philip Boedoro attaching the statement of Hon. John Vacher Amos made to him by John Vacher Amos on 10 July 2013 is to be preferred and accepted as the most recent intention of John Vacher Amos.





The evidence of Tony Nary and Ham Lini Vanuaroroa are rejected. In such a circumstance, the signature of MP John Vacher Amos cannot be counted for the Request.

It is a fact that MP Christopher Emelee filed a sworn statement in this proceeding. The Court finds that the name and signature of MP Christopher Emelee appear on the Request for an extraordinary session of Parliament lodged at the office of Speaker of Parliament on 10 July 2013. It is a fact that Christopher Emelee was mentioned as an Applicant in this proceeding without his instructions and consent to be joined as an Applicant in this proceeding as stated in his sworn statement.

It is a fact that he is interested in this proceeding because of the use of his name and signature in the request for an extraordinary session of Parliament dated 10 July 2013 which was deposited with the Speaker of Parliament. It is an accepted fact that he has never signed the letter of Request dated 10 July 2013 and that he did not and does not support the letter of request to convene Parliament in an extraordinary session of Parliament.

Mr Christopher Emelee's signature on the Request dated 10 July 2013 cannot be counted for the request as it should not appear on the request of 10 July 2013 at all.

It is a finding that the request to the Speaker dated 10 July 2013, is made up of a request letter attached with photocopies of names and scattered signatures. There was no evidence of a simple list of names with contemporaneous signatures. There was no written confirmation by each Member of Parliament who supported the request to assist the Speaker before the request could be placed before Parliament.

There is no evidence of any participation of the Speaker in getting the Four MPs to sign their statements to him on 10 July 2013 as alleged by the Applicants. There is overwhelming evidence to the contrary that the Four above named MPs came to see the Speaker voluntarily and expressed their complaints and concerns voluntarily to him as the Speaker of Parliament.

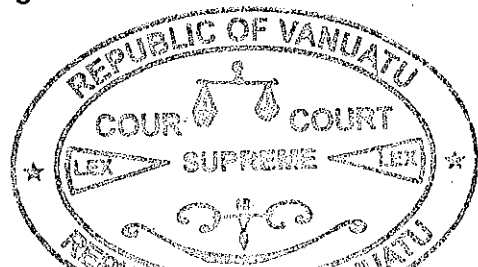
Finally, it is a fact and common knowledge that MP George Andre Wells was suspended by Parliament on 6 April 2013 and that he is still on suspension.

It is also a fact and common knowledge that Mr Pascal Sebastien Iauko was declared elected Member of Parliament by the Electoral Commission after a by-election held on Tanna Constituency in this year 2013 and Mr Pascal S. Iauko has not yet been formally sworn in as a Member of Parliament.

### **LAW AND ITS APPLICATION**

Below are the relevant and important provisions of the Constitution and Standing Orders of Parliament to the issues before the Court:-

Articles 1; 2; 4(1); 21(1),(2); 43(1),(2) and 53 are the relevant provisions of the Constitution. Order 14(1), (2) and (5) of the Standing Orders of Parliament is the relevant Standing Order.



They are set below for ease of reference:

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

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

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

*"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.*

*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."*

*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."*

Order 14 of the Standing Orders of Parliament provides:

*"14. (1) Whenever the Speaker so decides or is requested by the Prime Minister or the majority of the Members of Parliament, he shall summon Parliament to meet in extraordinary session.*

*(2) Any request made to the Speaker under paragraph (1) shall be in writing and shall be signed by the Prime Minister or Members requesting the extraordinary session. Such request shall contain:-*

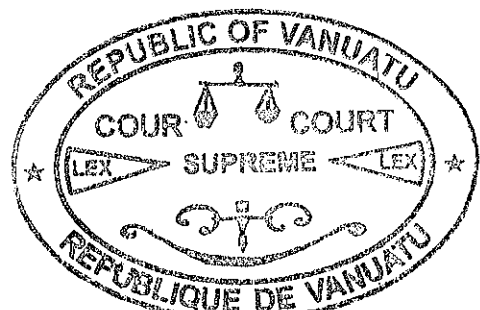
*(a) The reason for which an extraordinary session is requested;*

*(b) A statement of the specific matter or matters to be discussed during the extraordinary session;*

*(c) The expected duration of the extraordinary session and a proposed date for its opening.*

*(5) The Clerk shall send to each Member a notice stating that the extraordinary session will commence on the date specified therein. The notice shall contain a statement of the matter or matters to be discussed during such session. The notice shall be given at least seven (7) day before the day appointed for the opening of the extraordinary session."*

Following are case authorities referred to and relied upon by Counsel of the Applicants:



Attorney General and Edward Natapei -v- Willie Jimmy and others [1996] VUCA 1; and Lini-v Speaker of Parliament [2004] VUSC 42.

Mr Bani on behalf of the Applicants submitted in substance that the Court shall apply the Court of Appeal Judgment in Attorney General and Edward Natapei –v- Willie Jimmy and others [1996] and in Lini v Speaker of Parliament [2004] in the present case.

The summary of facts and decisions in the case of Attorney General and Edward Natapei- v- Willie Jimmy and others [1996] are this:

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 [1996] VUCA 1; Case No. 07 of 1996**. In that case, the Court of Appeal held:

*“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-*

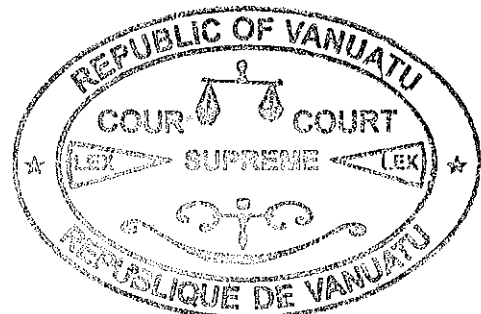
- (i) Deprive the majority of the members of the House from exercising the power to legislate, by majority decisions, as is the plain intention of the Constitution – see Articles 1, 4 and particularly 21(3); and*
- (ii) Give the Speaker, an officer of Parliament, the discretionary power to determine 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].*

Factually, the then Speaker of Parliament, Hon. Edward Natapei, received a request to summon Parliament in an extraordinary session in August 1996 pursuant to Article 21(2) of Constitution. The Request was signed by 27 Members out of 50 Members. At the time of lodging the request, two members who signed the request were suspended by Parliament. The Speaker considered the request and ruled that the request was not in order.



The ruling of the Speaker was challenged in the Supreme Court. The Supreme Court found that there was a majority of members of Parliament who requested the Speaker to summon Parliament in an extraordinary session pursuant to Article 21(2) of Constitution and that the suspension of the two members of Parliament by Parliament did and the signatures of the two suspended members of Parliament did not render their signatures on the request invalid. **The Court stated that the Speaker has no authority to discuss a request lawfully made by the majority of the Members. That is a matter for Parliament.** The Court then declared the ruling of the Speaker unconstitutional. On appeal, the Court of Appeal stated:

"It is a difficult question whether a member who has been "suspended from the service of Parliament", (which was the status of two of the Respondents on 26 August,) retains the right to join in a request for an extraordinary session: see the discussion in Browning, *House of Representatives Practice*, 2<sup>nd</sup> Edition 504-5.

But the argument is a barren one.

If those two respondents were, by reason of their suspension, not "members" for the purposes of Article 21(2), then the total number of members for the purposes of that Article would be 48, of whom 25 had joined in the request. There must be a consistency of approach. If suspended members lack the ability to exercise members' rights under Article 21 then such members cannot be taken into account in determining what constitutes a majority. The request was made either by 27 out of 50 members or alternatively 25 out of 48 members." The Court of Appeal then concluded:

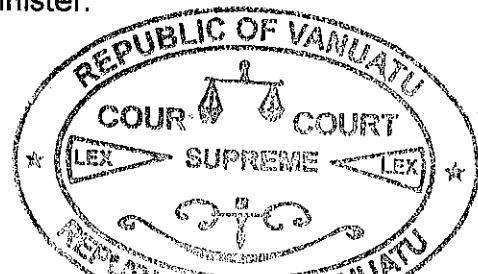
"While we have differed from some of the conclusions reached by the learned trial judge, we are satisfied that he was right in concluding that a parliamentary democracy such as was created by the Constitution of this country can only operate effectively if a majority of the members of parliament can require that it be called into session to deal with parliamentary business. We are also satisfied that Article 21(2) was intended to ensure that parliamentary business was not restricted to biennial ordinary sessions, but could be conducted in extraordinary session whenever a majority of members believed that step was necessary.

We consider the learned judge was right in concluding that unless that provision were made effective, Parliament's ability to direct and control the Executive Branch of government would be significantly lessened, and the power of the many would become the power of the few."

In Lini-v- Speaker of Parliament case of 2004, the facts are summarized as follow:

On 4 August 2004, 27 Members of Parliament signed the following:-

A request for the Speaker to summon Parliament in an Extraordinary Session; a Notice of Motion of No Confidence; a Motion of No Confidence signed by 27 Hon Members of Parliament and a covering letter from Hon. Ham Lin, Leader of Opposition dated 4 August 2004 to the Respondent. The request by 27 Members of Parliament proposed for the Extraordinary Session to open on 12 August 2004 to discuss the Motion of No Confidence against the Prime Minister Hon. Rialuth Serge Vohor and the election of a new Prime Minister.



*[Handwritten signature]*

The service of the request for the Speaker to summon Parliament in an Extraordinary Session, the Notice and the Motion of No Confidence in the Prime Minister of Vanuatu and the covering letter of 6 August 2004 explaining to the Respondent the nature of the request and the Motion on the Clerk of Parliament on 4 August 2004, constitutes a proper and valid service on the Office of the speaker of Parliament.

There is no evidence that any of the 27 Members of Parliament withdrew his signature requesting the Speaker to summon Parliament in an Extraordinary Session to debate the Motion of No Confidence against the Prime Minister.

The only evidence before the Court is that Hon. Arnold Prasad MP withdrew his signature and support on the Motion of No Confidence against the Hon. Prime Minister Serge Rialuth Vohor. This is a different matter from Hon. Arnold Prasad's signature and request dated 4 August 2004 requesting the Speaker to summon Parliament in an Extraordinary Session to open on 12 August 2004 to debate the Motion of No Confidence against the Prime Minister.

The request of Hon. Arnold Prasad, MP is annexed to the sworn statement of Hon. Ham Lini of 10 August 2004 in support of the Constitutional Application and marked "A26". It is reproduced below:-

«PARLEMENT DE LA REPUBLIQUE DE VANUATU  
PARLIAMENT OF THE REPUBLIC OF VANUATU

HUITIEME LEGISLATURE / EIGHTH LEGISLATURE

Dear Honourable Speaker,

**REQUEST FOR CALLING OF AN EXTRAORDINARY SESSION  
OF PARLIAMENT**

*In accordance with the provision of Section 21(2) of the Constitution and Standing Order 14(1) (2) (a) (b) (c), I Hon. Arnold PRASAD, Member of Parliament for Santo Constituency, hereby request that the Parliament meet in Extra Ordinary Session, to open on the 12<sup>th</sup> August 2004 to discuss Motion of No Confidence Against the Prime Minister Honourable Rialuth Serge VOHOR and the election of a new Prime Minister.*

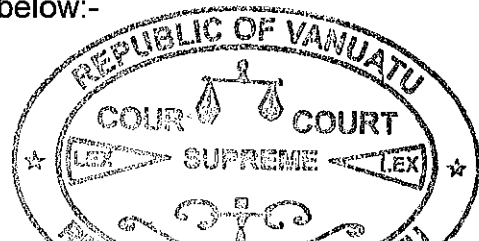
*Yours sincerely,*

*Hon. Arnold PRASAD (MP)  
Member of Parliament for Santo*

*Dated at Port-Vila this 4<sup>th</sup> day of August 2004."*

[This letter of 4 August 2004 was signed by Hon. Arnold Prasad].

The signature and request of Hon. Arnold Prasad requiring the Speaker to call Parliament in an Extraordinary Session dated 4 August 2004, is still in existence and has not been withdrawn by him. What are withdrawn by Hon. Arnold Prasad are his signature and his support on the Motion of No Confidence against the Prime Minister Hon. Rialuth Serge Vohor. The Motion bears names and signatures of the Applicants including those of Hon. Arnold Prasad dated 4 August 2004. The said motion is annexed and marked "C" to the sworn statement of Hon. Ham Lini, Leader of Opposition. It is reproduced below:-



**"CONSTITUTION OF THE REPUBLIC OF VANUATU**

**PARLEMENT DE LA REPUBLIQUE DE VANUATU  
PARLIAMENT OF THE REPUBLIC OF VANUATU**

**HUITIEME LEGISLATURE / EIGHTH LEGISLATURE**

**STANDING ORDERS OF PARLIAMENT**

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**Motion Number 1 of 2004**

**Proposed by: Honourable Ham Lini Member of Parliament**

**Seconded by: Honourable Nipake Edward Natapei Member of Parliament**

**PROPOSE: MOTION OF NO CONFIDENCE AGAINST THE PRIME MINISTER  
OF THE REPUBLIC OF VANUATU, HONORABLE RIALUTH SERVE VOHOR**

---

**WHEREAS:** Pursuant to Article 43(2) of the Constitution of the Republic of Vanuatu Parliament may pass a motion of no confidence in the Prime Minister.

**AND WHEREAS:** Once such a motion is passed to the effect that renders the office of the Prime Minister vacant the Members of Parliament are mandated by Article 41 of the said Constitution and Standing Orders 9(3) and 8(2), (3) and (4) of the Standing Orders of Parliament to elect a Prime Minister from amongst the said Members of Parliament.

**AND WHEREAS:** It is contended by the undersigned Members of Parliament that the Hon. Serge Vohor RIALUTH, elected Prime Minister on the 29<sup>th</sup> July 2004 no longer enjoys the confidence of the majority of the Members of Parliament.

**AND WHEREAS:** It is intended by the undersigned Members of Parliament in exercise of each of their prescribed rights under the Constitution to move a motion of no confidence in the current Prime Minister, the Hon. Serge Vohor Rialuth.

**THIS MOTION IS SUPPORTED BY THE FOLLOWING MEMBERS OF  
PARLIAMENT WHO HAVE GIVEN THEIR SIGNATURE THIS 4<sup>th</sup> DAY OF  
AUGUST 2004**

Hon. Ham LINI Hon. Edward Nipake NATAPEI  
Member for Pentecost Member for Port-Vila

Hon. Sato KILMAN Hon. Joshua KALSAKAU  
Member for Malekula Member Efate

Hon. Peter VUTA Hon. Willie JIMMY  
Member of Ambae Member of Port-Vila

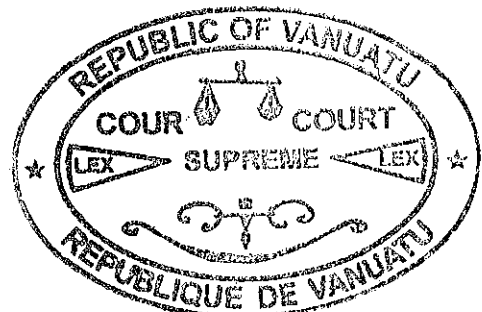
Hon. George Andre WELLS Hon. James BULE  
Member for Luganville Member for Ambae

Hon. Philip BOEDORO Hon. Danstan HILTON  
Member for Maewo Member for Banks/Torres

Hon. Morkin STEVENS Hon. Isabelle DONALD  
Member for Tanna Member for Epi

Ho. David TOSUL Hon. Sam Dan AVOCK  
Member for Pentecost Member for Paama

Hon. Seule TOM Hon Moses KAHU  
Member for Tongoa Member for Tanna



Hon. Laiurou Erick SHEDRAC Hon. Hon Sandy IAVCUTH  
Member for Banks/Torres Member for Santo

Hon. Charlie ROCROC, Hon. Bob LOUGHMAN  
Member for Malekula Member for Tanna

Hon. Jack ERIC Hon. Leinavau TASSO  
Member for Luganville Member for Epi

Hon. Malon HOSPMANDER Hon. Noel TAMATA  
Member for Malekula Member for Pentecost

Hon. Arnold PRASAD, Hon Thomas NENDU  
Member for Santo, Member for Tafea Outer Island

Hon. Paul TELUKLUK Hon. Esmon SIMON  
Member for Malekula Member for Malekula

Hon. Raphael WORWOR Hon. Philip ANDIKAR  
Member for Ambrym Member for Santo"

The above Motion is the one referred to by Hon. Prasad in his letter of 6 August 2004 to the Respondent/Speaker informing the Speaker of the withdrawal of his signature and support.

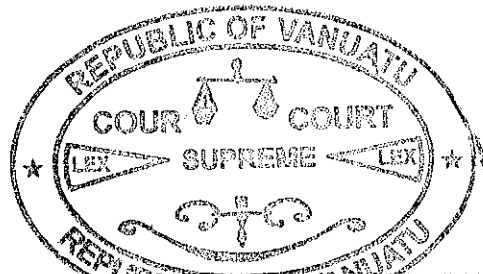
Although, the Respondent/Speaker, stated that the documents be kept in his Secretariat for him to decide and to deal with them at the time and manner he thinks fit, he nevertheless has indicated his intention that he could not summon Parliament because there was no majority of 27 Members of Parliament given that the Hon. Arnold Prasad had revoked his signature for the Notice of Motion of No Confidence against the Prime Minister, Hon. Rialuth Serge Vohor.

It must be observed that the factual circumstances of the present case are very different from those of Willy Jimmy Case of 1996 and Lini –v- Speakre case of 2004. They have to be distinguished from the current case.

In the present case, after a Request was lodged to the Speaker, Four (4) Members of Parliament went to see the Speaker and informed the Speaker that they did not sign the Request dated 10 July 2013 which was lodged to his office calling for an extraordinary session. They informed the Speaker that their names and signatures were used on documents for different purposes and at different times. They did not sign the request of 10 July 2013. The speaker has to take the complaints of these Members of Parliament into consideration as he did in this case as part of his constitutional duty.

The ratio decidendi of the case of AG –v- Willy Jimmy which was applied in Lini –v- Speaker in 2004, are relevant only against the actions or behaviours or attitudes of a Speaker of Parliament after a request has been lodged and there were no complaints from Members of Parliament about the use of their signatures or their consent not being sought or authorized to show their intention or support for the request or calling of Parliament in an extraordinary session.

The Speaker is entitled to consider the complaints of any Member of Parliament that he/she does not sign a Request pursuant to Article 21(2) of the Constitution. Such a case must also be considered on its own facts and circumstances as the case of Korman –v- Republic of Vanuatu [2010] VUSC 215; Constitutional case No. 02 of 2010 [20 Nov. 2010].



On the question of Mr Pascal Sebastien Iauko as a newly elected Member of Parliament, the law is this. Under the Oaths Act [Cap 37], section 5(1), (2) provide for oaths for Members of Parliament as follows:

### Oath of members of Parliament.

(1) The oath of allegiance for a member of Parliament shall be in the following form:

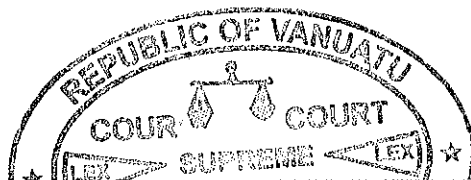
"I.....having been elected a member of Parliament do swear [or solemnly affirm] that I will bear true faith and allegiance to the Republic of Vanuatu, will uphold the Constitution and the law, and will conscientiously and impartially discharge the responsibilities to the people of the Republic of Vanuatu upon which I am about to enter [So help me God]"

**(2) The oath of allegiance shall be taken and subscribed by each member of Parliament during the first sitting of Parliament following a general election or during the sitting at which a member of Parliament first take up his seat in Parliament.** (Emphasis added)

It follows that until the oath is taken, an MP may not receive a salary; takes his/her seat or speaks in debates or votes. Mr Pascal Sebastien Iauko has filed a sworn statement in this proceeding dated 13<sup>th</sup> July 2013. In that statement, he admitted that he has yet to take his oath as a Member of Parliament. He deposed that despite the oath, he has received normal salary and entitlements as all other MPs. This is in breach of the law. Mr Pascal S. Iauko is not entitled to be paid a salary and entitlements of a Member of Parliament until he has taken his oath during the sitting at which he first takes up his seat in Parliament. Any salary/allowance and entitlement paid to him before the day he becomes a Member of Parliament (i.e. day at which Mr Iauko first takes up his seat in Parliament) must be recovered back into the public treasury. Mr Pascal Iauko simply is not entitled to any salary or allowance before he becomes a Member of Parliament pursuant to the provisions of the Oaths Act (s.5 (1) (2) [cap. 37] and Parliament (Members' Expenses and Allowances) Act (in particular s.3 (1) (2)) [cap 109]. Parliament, as the Legislature, has to lead its administration and governance by example.

The Speaker was right that the signature of Pascal S. Iauko on the Request of 10 July 2013 was invalid and of no effect. It cannot be counted for the Request as it should never be there in any event.

On the status of MP George Andre Wells as a suspended Member of Parliament, the Speaker was wrong to invalidate his signature on the request of 10 July 2013. A suspended Member of Parliament can still sign a Request under Article 21(2) despite the fact that he/she could not take part in debates or votes in Parliament. His status as a Member of Parliament cannot be taken out of him by Parliament. Here, the Court is informed that MP George A. Wells was suspended from 6 April 2013 to 31 December 2013. It is a lengthy period during which the people he represents in Parliament cannot be represented in Parliament. On comparative base with the United Kingdom parliamentary practices, a Member of Parliament could be disciplined by an imposition of fines or suspended for a short period (say days without salary). This has the effect of avoiding a portion of the electorate deprived of its representative in Parliament for so long. In this country, the Constitution is the supreme law of the land. The question then is whether a





suspended MP's request for an extraordinary session of Parliament pursuant to Article 21(2) of the Constitution is lawful. I note that the suspension of MP George Wells is for 9 months. It is a lengthy one. I do not see why as a Member of Parliament his request for an extraordinary session of Parliament would be invalid if he intends to show by his signature on the request an intention for Parliament to meet in an extraordinary session to deal with parliament business, be it a motion of no confidence in the Prime Minister of the country.

I have already answered this question in the case of Willie Jimmy of 1996 referred to above. The view I hold in that case on this point remains the same.

In the present case, on the basis of evidence before the Court, the request of 10 July 2013 is supported by 23 Members of Parliament out of 51 Members (Excluding Pascal Sebastien Iauko). The request for an extraordinary session of Parliament dated 10 July 2013 is not a request made within the meaning of Article 21(2) of the Constitution. The ruling of the Speaker of 11 July 2013 that the request was not in order, is not unconstitutional.

Save for the declaration made in respect to the request of suspended Member of Parliament George Andre Wells, all declarations and orders sought by the Applicants are refused.

The Court makes the following declarations and orders:

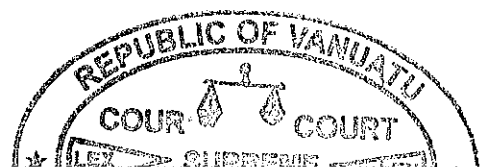
#### **DECLARATIONS AND ORDERS**

1. A declaration that the decision of the Speaker of Parliament on Thursday 11<sup>th</sup> July, 2013 declaring invalid, the Request for calling of an Extraordinary Session of Parliament, is invalid and of no legal effect, **is refused**.
2. An order that the decision of the Speaker of Parliament on Thursday 11<sup>th</sup> July, 2013 declaring invalid, Pascal Sebastien Iauko's signing of the Request for an extraordinary sitting of Parliament and the Motion of no confidence against the Prime Minister on the basis that Pascal Sebastien Iauko is yet to take his oath as a member of Parliament is invalid and of no legal effect, **is refused**.
3. An order that the decision of the Speaker of Parliament on Thursday 11<sup>th</sup> July, 2013 declaring George Andre Wells illegible to sign any Request for calling of an extraordinary session of Parliament due to George Andre Wells currently being on suspension from Parliament as of 6 April 2013 is invalid and of no legal effect, **is granted**.
4. There is no order as to costs.

#### **DICTUM**

I consider important I repeat and adapt the dictum I issued in the case of Korman –v- Republic of Vanuatu [2010] VUSC 215; Constitutional Case 02 of 2010 (20 November 2010) in the present case.

Since the independence of Vanuatu in 1980, Vanuatu becomes a sovereign Republic with a written Constitution as its supreme law. Vanuatu continues to grow its constitutional and democratic foundations and developments. The judicial



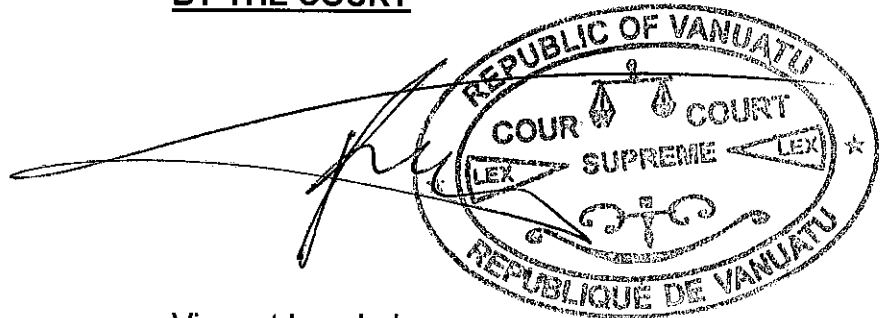
pronouncements contribute to this process of constitutional growth under the supremacy of the rule of law. It must be encouraged and sustained. One of the duties of all citizens and leaders of the Republic is to work and enhance the nation's constitutional growth within the spirit of the Constitution [PART II – FUNDAMENTAL DUTIES (Articles 7-8)].

This constitutional case also like the case of Korman –v- Republic of Vanuatu [2010], raises an important question of the process of Parliament in respect to Standard Procedures and Practices to invoke Article 21(2) of the Constitution in the interface between the rights of the Majority and the Minority of Members of Parliament in Parliament within the constitutional principle of a responsible government before the Legislature (Articles 39 and 43 of the Constitution).

The present case also smells out fraudulent or other serious dishonest practices within the criminal laws of Vanuatu by individuals or outside bodies in the absence of clear standard procedures and practices to invoke Articles 21(2) of the Constitution. It is hoped that Parliament and those who are entrusted to assist Parliament put in place relevant, clear and simple Parliamentary Standard Procedures and Practices to minimize those fraudulent practices in the process of invoking Article 21(2) of the Constitution and to maintain the continuous and ongoing constitutional democratic development of the Republic.

**Dated at Port Vila, this 25<sup>th</sup> day of July 2013.**

**BY THE COURT**



**Vincent Lunabek  
Chief Justice**