

BETWEEN: MALAO STEVEN
Applicant

AND: CHAIRMAN OF ELECTORAL COMMISSION
First Respondent

AND: REPUBLIC OF VANUATU
Second Respondent

Mr Saling Stephens for the Applicant
Mrs Vira Trief for the First Respondent and Second Respondents

REASONS FOR ORAL JUDGMENT OF 9 NOVEMBER 2011

Mr Malao Steven was a candidate to contest the Sanma Provincial Elections held on Thursday 10 November 2011.

On 25 October 2011, the Electoral Commission declared Mr Malao Steven's candidature invalid and so did not include his name on the approved list of candidates because his declaration of candidature form was lodged contrary to the requirements of the Local Government Counsel Rules.

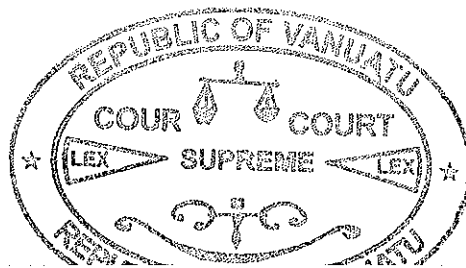
Mr Malao Steven applied to the Supreme Court to review the decision of the Electoral Commission of 25 October 2011 by filing a Judicial Review Claim and an Urgent Interlocutory Application both filed on 7 November 2011.

The Court Urgently heard the claim and the application on 9 November 2011 and refused to grant the declarations and orders sought by the claimant/application. The Court ordered the claimant to pay the costs of the First and Second Defendants/Respondents.

The reasons for the oral decision are set out as below.

On 7 November 2011, Mr Saling on behalf of the Applicant applied for the following relief:

1. That the claimant's candidature application be urgently considered and approved by the First named Defendant before the Sanma Provincial Government Election Proceeded on 10 November 2011.
2. Alternatively, that the Declaration of candidates by the First named Defendant on 25 October 2011 published through Radio Vanuatu is unlawful, void and of no effect and must be quashed.



The Applicant through his Counsel, also filed an Urgent Application for interlocutory orders seeking for relief 1 and 2 referred to above with sworn statements of the applicant.

The Attorney General filed a defence on behalf of the First and Second Respondents. The Defence or response to the claim was contained there under.

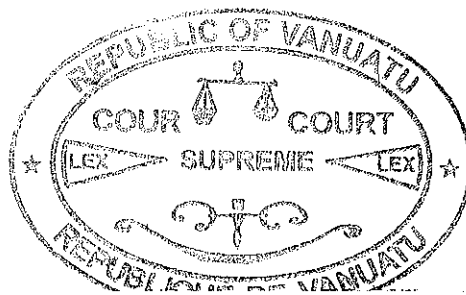
The First and Second Respondents deny each and all allegations contained in the claim. They say that the claimant is not entitled to the relief he is seeking.

The Defence is supported by the sworn statement of John Killion Taleo, Chairman of the Electoral Commission filed 9 November 2011 and statement of one Marina Moli filed on the same date.

The Claim and the Application were heard by the Court on 9 November 2011.

The facts were not disputed. The combination of the sworn statements show the following chronological events:

- On 25 August 2011, the Electoral Commission met and made the following decisions in respect to the Sanma Provincial Government Council Elections:
 - (a) the starting date for candidature forms as at 30 September 2011;
 - (b) the closing date for lodging of candidature forms as at 4.30PM on 14 October 2011;
 - (c) the publication of the qualified candidates list on 25 October 2011; and
 - (d) the polling day as at 10 November 2011.
- The Electoral Commission's decision of 25 August 2011 was broad casted on the radio.
- On 14 October 2011, Mr Malao Steven came to the Sanma Provincial Headquarters with his declaration of candidature form. He was told that his Form was incomplete because not all the sponsor details had been completed and he had to pay the election deposit of VT20,000 to the Government cashier located at the VNPF Office building.
- Mr Malao Steven did not lodge his form by 4.30PM or any other time on 14 October 2011.
- On 17 October 2011, Mr Malao Steven came back to the Sanma Provincial Headquarters with his form and a receipt showing payment of the Vt20,000 election deposit.
- He was informed his form could not be accepted at the Sanma Headquarters as the time for lodgement of forms, being 4.30PM on 14 October 2011, had passed but he could sent it directly to Port Vila.



- On 18 October 2011, the Electoral Office received the Claimant's form via Air Vanuatu air freight.
- On 18 October 2011, the Principal Electoral Officer informed one Mr Ron who was the contact person for the claimant Malao Steven that the Electoral Office had on 18 October 2011 received the Claimant's form and that it would be considered by the Commission on 25 October 2011.
- On 25 October 2011, the Commission considered the Claimant's candidature form. The Commission did declare the Claimant's candidature form invalid and refused to include his name on the approved list because his declaration of candidature form was not lodged by 4.30PM on 14 October 2011.

The approved list was read out by the commission over Radio Vanuatu on 25 October 2011.

The Court heard submissions from Mr Saling Stephen on behalf of the claimant. The Court heard also submissions from the Attorney General on behalf of the First and Second Respondents. The Court was referred to following relevant legislative provisions:

- Decentralization Act [Cap 230]
- Decentralization (Amended) Act No.07 of 2007
- Decentralization (Amended) Act No.24 of 2010

The Local Government Council Rules issued pursuant to the Decentralization Act [Cap 230] which were relevant and applicable in this case, were also referred to the Court.

The issue was whether the Claimant did lodge his candidature form on or before the date determined by the Electoral Commission which was 14 October 2011 by 4.30PM o'clock.

Part 2 of the Local Government Council Rules is the relevant part. It is set out here for ease of reference:

PART 2 – CANDIDATES FOR ELECTION

2. Disqualification for election

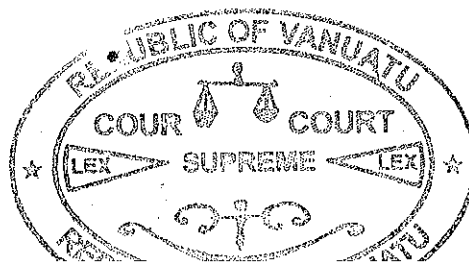
A person shall be disqualified for election or appointment as a member of a Local Government Council if he –

- (a) is a member of Parliament*
- (b) is qualified from being a member of Parliament*
- (c) is in the service of the local government council*

3. Eligibility of candidate

A person is eligible to stand as a candidate for election to a Local Government Council if her or she:

- (a) is a citizen of Vanuatu; and*



[Handwritten signature]

- (b) is registered as an elector in the Local Government Region in which he or she is a candidate; and
- (c) is not disqualified from voting; and
- (d) has not received a sentence including a suspend sentence of a term or terms of imprisonment which has not ended; and
- (e) is not an undischarged bankrupt; and
- (f) has attained 21 years of age.

4. Declaration of candidature

(1) On or before a date determined in writing by the Electoral Commission, a candidate for a Local Government Council election must lodge with a registration officer within the meaning of the Representation of the People Act [Cap.146] in the Local Government Region in which the election is to be held.

- (a) a declaration of candidature signed by him or her containing the particulars and in the form set out in schedule 1 or in a form approved by the Principal Electoral Officer, and
- (b) a deposit of VT20,000; and
- (c) 2 full face photographs of himself or herself; and
- (d) Except for a candidate sponsored by a political party having a symbol approved by the Electoral Commission, an illustration on paper of his or her personal electoral symbol.

(2) A declaration of candidature must also contain the signature of not less than five sponsors who are registered to vote in the Local Government Region and not related to the candidate.

(3) No person may lodge a declaration of his or her own candidature for more that one Local Government Region.

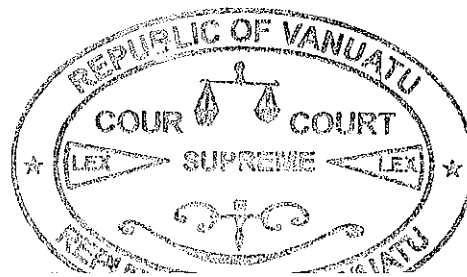
(4) The registration officer who receives a declaration must forward the declaration immediately to the Principal Electoral Officer. The Principal Electoral Officer must, soon as practicable, send a receipt in a form approved by him or her to the candidate.

(5) The Principal Electoral Officer must within 48 hours after receiving all declarations:

- (a) make a list of the candidates named in the declarations:
- (b) give copies to the Electoral Commission together with such comments on the validity of the candidature of any person named in the list as he or she considers fit.

5. Declaration of invalidity of candidature by the Commission

(1) When a declaration of candidature has been delivered in compliance with rule 4, the candidate shall stand sponsored for election unless and until the Electoral Commission declares his candidature invalid or evidence is given to its satisfaction that the candidate has died, or the candidate has withdrawn by notice in writing given to the Electoral Office.



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(2) *The Electoral Commission shall only declare a candidature invalid on the following grounds-*

- (a) *the candidate or his sponsors do not have the necessary qualifications or are disqualified; or*
- (b) *the declaration of candidature is not sponsored as provided in rule 4(2).*

(3) *Where the Electoral Commission decides that a candidature is invalid it shall so endorse the declaration of candidature giving reasons for its decisions.*

6. Resubmissions of declaration of candidature by candidates

(1) *Notwithstanding the provisions of the rule 7. The Electoral Commission shall, where it considers that a declaration of a candidature is invalid by reason of a bona fide error, not less than 14 days before polling day request the candidate to resubmit a valid declaration within 72 hours after such request.*

(2) *Where a declaration of candidature sponsored by a political party is declared invalid by the Electoral Commission or a candidature dies not less than 14 days before polling day another candidate sponsored by the same party may lodge a declaration or candidature provided that he does not so within 72 hours of the declaration or death.*

7. Publication of lists of candidates

A list of candidates shall be displayed at-

- (a) *the offices of the local government council;*
- (b) *the Parliament building;*
- (c) *the office of the Minister*
- (d) *the Electoral Office; and*
- (e) *such other places in the local government region as the Minister may direct, for not less than 14 days before polling day except in the case of new or re-submitted candidature under rule 6 where the period shall be not less than 9 days.*

On perusal of Part 2 of the Local Government Council Rules, the following were found and accepted:

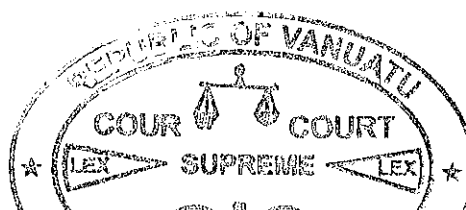
-Rule 2 sets the criteria for disqualification for election. There was no issue in respect to Rule 2.

-Rule 3 sets out the eligibility of candidates. There was no issue with it.

-The issue is whether the claimant complied with Rule 4 (1) (a) and (2) of Local Government Council Rules.

Rule 4 (1) (a) and (2) provides:

On or before a date determined in writing by the Electoral Commission, a candidate for a local government council election must lodge with a registration officer within the meaning of the Representation of the People Act [Cap 146] in the local government region in which the election is to be held:



(a) a declaration of candidature signed by him or her containing the particulars and in the form set out in the schedule 1... [Emphasis]

(b) ...

(c) ...

(d) ...

(2) A declaration of candidature must also contain the signatures of not less than five sponsors who are registered to vote in the local government region and not related to the candidate. [Emphasis]

By Rule 4(1) (a), the commission set the date for closing of lodging of candidature forms as 4.30PM on 14 October 2011.

On 14 October 2011, the candidature form of the claimant was incomplete. The evidence of Marina Moli showed that the candidature form of the claimant was incomplete as the sponsors forms was not filed or not completed.

Not only the claimant failed to lodge his candidature form in compliance with Rule 4 (1) (a) but the claimant also failed to comply with the requirement of Rule 4 (2).

Further on 18 October 2011, the candidature form of the claimant received by the Commission was complete with required sponsors signatures but after the date set for lodgement of candidatures form for Sanma Provincial Government Council Elections.

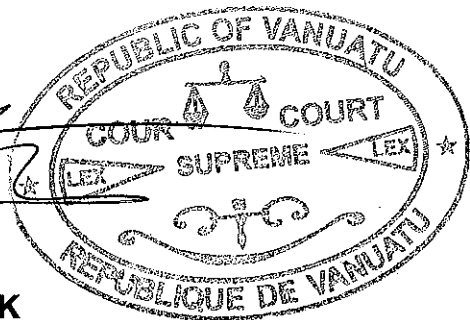

On 25 October 2011, the Commission considered the Claimant did not lodge his candidature form within the required date set by the Commission pursuant to Rule 4(1) (a).

In considering the facts and perusing the Local Government Council Elections Rules, the Court found and considered that the decision of the Electoral Commission dated 25 October 2013 was lawfully based. There was no basis for the Court to make the declaration and orders sought in the claim and/or application. The Court refused to Grant Orders 1 and 2 sought in the claim and/or application.

These are the reasons of the orders made by the Court on 9 November 2011.

DATED at Port-Vila this 12th day of August 2013

BY THE COURT



Vincent LUNABEK
Chief Justice