

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

Election Petition Case No. 01 of 2012

BETWEEN: DONALD RESTUETUNE

Petitioner

AND: GEORGE WELLS

First Respondent

AND: ELECTORAL COMMISSION

Second Respondent

Coram: *Mr. Justice Oliver A. Saksak*

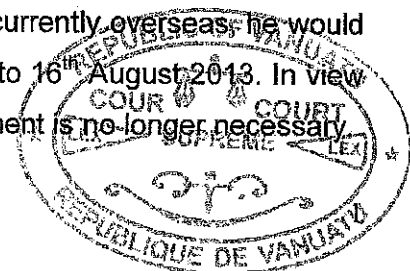
Counsel: *No appearance by Petitioner
First Respondent in person
Mr. Fredrick Gilu for Second Respondent*

Date: *12th August 2013*

DECISION

WHEREAS –

1. This Petition is scheduled for trial hearing today, 12th August 2013 as notified by Notice dated 17th July 2013.
2. Initially Ms. Christina Thyna was Counsel for the Petitioner but she filed a notice of ceasing to act on 5th August 2013.
3. Also on 5th August 2013 Ms. Thyna wrote to the Court advising amongst other things, that she would not be attending the hearing and that the trial may not proceed today.
4. Mr. Bill Bani is Solicitor on record acting for Mr. Wells. Counsel wrote to the Court on 9th August 2013 informing that as he is currently overseas, he would not attend trial today and sought an adjournment to 16th August 2013. In view of the discontinuance of proceeding, this adjournment is no longer necessary.



5. Mr. Gilu acknowledges the discontinuance of proceeding by the Petitioner. He however seeks an Order for costs of and incidental to the proceeding pursuant to Rule 2.13 of the Election Petition Rules and Rule 9.9(4)(c) of the Civil Procedure Rules.

6. Mr. Gilu provides the Court with an estimate Costs of VT957,500 made up of-

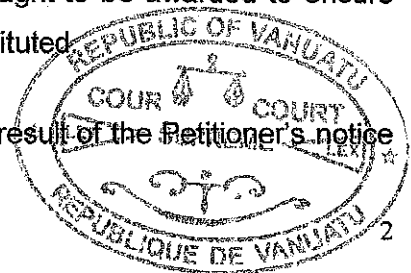
- (a) Airfares, Accommodation and Allowances – 1st Hearing = VT480,000
- (b) Airfares, Accommodation and Allowances – 2nd Hearing = VT277,500
- (c) Documentation and Time = VT200,000
- Total = VT957,500

Counsel submits the Court should award say VT650,000. The Court accepts that in the circumstances of the case the Second Respondent is entitled to costs and incidental to the proceeding. The Court allows the estimates produced and fixed costs in favour of the Second Respondent at VT650,000.

7. The Court gives opportunity to Mr. Wells on the question of costs. Mr. Wells informs the Court that he is in the process of preparing costs with his Counsel and will submit these in due course. Under those circumstances, the Court allows costs of and incidental to the proceeding in favour of the First Respondent against the Petitioner, but those costs must be on the standard basis to be agreed or taxed by the Court in the usual way.

8. The circumstances of this case warrant that costs be awarded against the Petitioner. Election Petitions are important as they can affect legislative and executive functions, and Petitioners who seek to challenge election results should consider their positions seriously before they commence any proceedings. They should always bear costs in mind before they start. If their positions are misconceived and their Petition is dismissed, or as here is discontinued because of insufficient evidence, they can expect to meet heavy costs as the inevitable consequences. Costs ought to be awarded to ensure that in future unnecessary litigations are not instituted.


9. The following Orders therefore are issued as a result of the Petitioner's notice of discontinuance.



- (a) Election Petition No. 02 of 2012 is hereby wholly discontinued against the First and Second Defendants and accordingly it is hereby dismissed.
- (b) The First Respondent George Wells is hereby reconfirmed by the Court as a duly elected Member of Parliament for the Luganville Constituency.
- (c) The First Respondent be entitled to his costs of and incidental to this proceeding against the Petitioner on the standard basis, as agreed or taxed.
- (d) The Second Respondent be entitled to their costs of and incidental to this proceeding on the standard basis allowed and fixed at VT650,000.
- (e) The Petitioner hereby forfeits his deposit of VT20,000 paid to the Registrar of the Court upon filing of his Petition.
- (f) The Registrar shall pay the VT20,000 to the Second Respondent in reduction of the costs allowed at VT650,000.
- (g) The Petitioner shall pay the balance of the Second Respondent's Costs of VT630,000 within 28 days from the date of this Order.

DATED at Luganville this 12th day of August 2013.

BY THE COURT


OLIVER A. SAKSAK
Judge

