

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

Election Petition Cases No. 02 & No. 03 of 2012

BETWEEN: LORIN SOLOMON

First Petitioner

AND: MALIU ARSEN

Second Petitioner

AND: TAVUE LANGI LANGI

Third Petitioner

**AND: THE ELECTORAL
COMMISSION**

First Respondent

AND: SAMSON SAMSEN

Second Respondent

AND: MARCELLINO PIPITE

Third Respondent

AND: JOHN LUM

Fourth Respondent

AND: ARNOLD THOMAS PRASAD

Fifth Respondent

AND: ALFRED MAOH

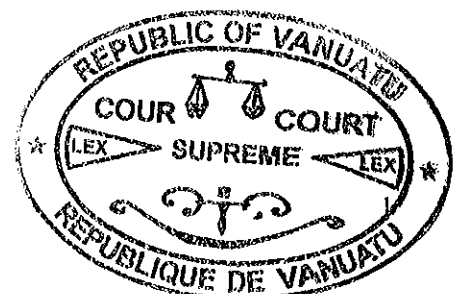
Sixth Respondent

AND: HOSEA NEVU

Seventh Respondent

AND: RIALUTH SERGE VOHOR

Eighth Respondent



BETWEEN: LIVO BANI

Petitioner

AND: HAVO MOLI

First Respondent

AND: THE ELECTORAL COMMISSION

Second Respondent

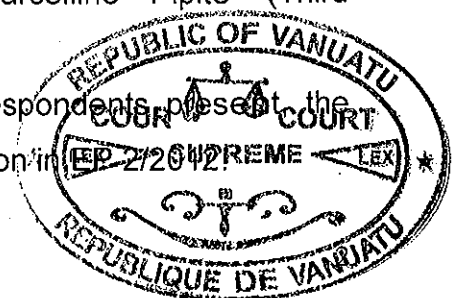
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mr. Paul Jerry Boe for Petitioners and Counter-Applicants*
Mr. Wilson lauma for Respondents Marcellino Pipite and Havo Moli

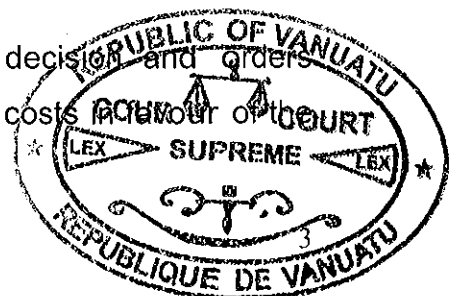
Date: *1st October 2013*

JUDGMENT

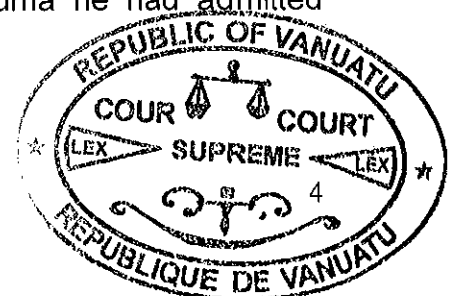
1. This judgment provides reasons for the oral decision and orders issued on 26th September 2013.
2. By way of background it is necessary to provide the following facts –
 - a. In relation to Election Petition Case 2 of 2021 (EP 2/2012), the Court dismissed the Petition on 15th May 2013 and awarded costs in favour of the First, Second, Third, Seventh and Eight Respondents.
 - b. The hearing was fixed for two days commencing on 15th May 2013. On this date –
 - (i) Counsel Mr. Leo did not appear.
 - (ii) The Petitioners had not paid trial fees as ordered.
 - (iii) Mr. lauma appeared as agent for Kapapa Lawyers.
 - (iv) The Petitioners had discontinued proceeding against Samson Samsen (Second Respondent) and Marcellino Pipite (Third Respondent).
 - (v) Upon applications by Counsel for the Respondents present, the Court issued judgment dismissing the Petition on 15th May 2013.



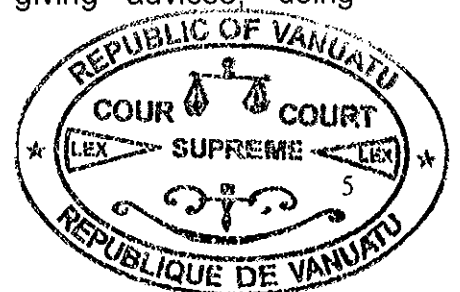
- c. Following that judgment the Third Respondent prepared a Memorandum of Costs and Disbursements dated 17th June 2013 and addressed to Lorin Solomon & Others c/- Colin B. Leo Lawyers. The amount of costs is VT6,695,160 claimed on the standard basis of VT10,000 per hour.
- d. No objections were filed by Counsel for the Petitioners and Kapapa Lawyers filed an application for taxation on 9th September 2013. The application was filed together with the sworn statement of Mr. Wilson lauma in support.
- e. Paragraph 1 of Mr. lauma's statement states:
- "I am employed by the Law Firm of the Third Respondent and I am authorised to make this sworn statement for reasons that I have carriage over the matter in this proceeding." (My emphasis).
- f. On 16th September 2013, the Court issued a Notice of Taxation Hearing returnable at 0900 hours on 26th September 2012.
- g. On 25th September 2013 at 2.30 pm Mr. Leo filed the documents:
- Petitioners Response to application and Counter-Application;
 - Response to Third Respondent's Costs and Counter-Application;
 - Sworn statement in support of the Application.
- h. The Solicitor General delivered a Memorandum of Costs on behalf of the Electoral Commission (First Respondent) dated 25th September 2013 for the sum of VT253,500. No Counsel from the State Law Office was present at the hearing on 26th September 2013.
- i. In relation to Electoral Petition Case No. 3 of 2012 (EP 3/2012) the Court held two days of trial hearings on 17 – 18 May 2013. Mr. lauma appeared as agent for Kapapa Lawyers on behalf of Havo Moli, First Respondent.
- j. On 18th May 2013, the Court delivered its oral decision and orders dismissing the Petition and, among others awarding costs in favour of the First and Second Respondents.



- k. On 29th May 2013, the Court published its reasons.
- l. On 5th June 2013, Kapapa Lawyers submitted a Bill of Costs to Livo Bani c/- Colin Leo & Associates in the sum of VT2,705,120 claimed on the standard basis of VT10,000 per hour. No objections having been filed the First Respondent applied for taxation on 9th September 2013 together with a sworn statement by Mr. lauma filed on the same date.
- m. Paragraph 1 of the statements states:-
- “I am employed by the Law Firm of the First Respondent and I am authorised to make this sworn statement for reasons that I have carriage over the matter in this proceeding.” (My emphasis).
- n. On 25th September 2013 at 2.30 pm Mr. Leo filed a response to the First Respondents application for taxation and counter-application together with a sworn statement in support.
- o. On 25th September 2013, the Solicitor General delivered a Bill of Costs on behalf of the Second Respondent (Electoral Commission) for the sum of VT887,495. No Counsel from the State Law Office was present at the hearing on 26th September 2013.
3. In their responses to the Bill of Costs in EP 2/2012 and EP 3/2012, the Petitioners contended that the amounts claimed are excessive. And by their counter-applications the Petitioners seek orders that all costs claimed by Marcellino Pipite and Havo Moli be refused.
4. The Petitioners submitted that Mr. lauma was not a barrister and solicitor for the purposes of the Legal Practitioners Act to be entitled to legal costs. Counsel relied on the case of Ebbage v. Ebbage [2001] VUCA 60 as their authority for their submission that costs are not recoverable where incurred by a person not registered as a legal practitioner in Vanuatu. They further submitted that from the sworn statements of Mr. lauma he had admitted clearly that he had carriage of the matter.




5. Mr. lauma when responding to Mr. Boe's arguments and submissions informed the Court that he was not objecting to the application but he put forward some facts which he urged the Court to consider when determining the application. These were:-
- (a) Although for chambers matters he appeared alone, in open Court he appeared under supervision with a Senior Counsel. These were Mr. Daniel Yawha and Mr. Kiel Loughman.
 - (b) He was instructed by the Law Firm of Kapapa Lawyers and Consultancies to act in the two election petition cases.
 - (c) He has qualifications in law, and possesses an LLB degree and is therefore not a lay person.
 - (d) Kapapa Lawyers & Consultancies have supervision arrangements with Yawha and Associates and Loughman & Associates for the purposes of assessing whether or not he is fit to be admitted.
 - (e) In regard to his sworn statement Mr. lauma admitted he took the cases at trial but stated it was not the case that he took the cases from beginning.
6. The real issue was whether or not Mr. lauma is a registered legal practitioner under the Legal Practitioners Act. And the answer is clearly in the negative. Mr. lauma did not produce any evidence that he has been admitted as a barrister and solicitor to be entitled to practice as such. He did not produce any evidence to show he was issued with certificate of registered legal practitioner granted under section 1L of the Act. He did not produce any evidence to show that he has temporary admission under section 13 of the Act. He did not produce any evidence from his Senior to show that he only acted for the Respondents during trial and not any other time.
7. The Court accepted Mr. Boe's submissions that from his admission in his sworn statements Mr. lauma had full carriage of the two election petition cases including taking of instructions, perusal, giving advices, doing researches and Court attendances.



8. The Court accepted Mr. Boe's submissions that on the basis of Ebbage v. Ebbage the costs incurred have become debts but because Mr. lauma is not a registered legal practitioner, those costs cannot be recovered. Despite Mr. lauma acting under supervision of Mr. Yawha and Mr. Loughman, he acted not as an admitted barrister or solicitor. As such his costs may not be recovered.
9. It was for those reasons the Court accepted the counter-applications of the Petitioners. Accordingly, the Court rejected the costs claimed by Mr. Marcellino Pipite and Mr. Havo Moli and dismissed them.
10. The Court pointed out that this ruling did not extend to or include the Bill of Costs submitted by the Solicitor General in relation to costs of the Electoral Commission in respect of the two cases. These remain alive and will be dealt with in another taxation hearing on a date to be fixed and notified in the usual way, unless those costs are accepted and paid.
11. The Court declined to award the costs of the counter-applications as there was no need of it.

DATED at Luganville this 30th day of September 2013.

BY THE COURT


OLIVER A. SAKSAK
Judge

