

IN THE MATTER OF: SECTION 62 OF
REPRESENTATION OF THE
PEOPLES ACT CAP [146]

BETWEEN: JEAN KALOMULE RAVOU AKII
Petitioner

AND: THE PRINCIPAL ELECTORAL
OFFICER
First Respondent

AND: THE ELECTORAL COMMISSION
Second Respondent

AND: HOSEA NEVU
Third Respondent

ELECTION PETITION CASE NO.05 OF 2012

IN THE MATTER OF: SECTION 62 OF
REPRESENTATION OF THE
PEOPLES ACT CAP [146]

BETWEEN: VATOUT MALIU MALIARE
Petitioner

AND: THE PRINCIPAL ELECTORAL
OFFICER
First Respondent

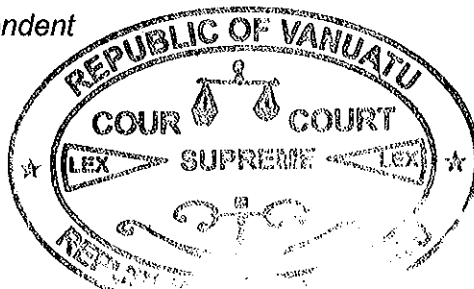
AND: THE ELECTORAL COMMISSION
Second Respondent

AND: HOSEA NEVU
Third Respondent

Coram: V. Lunabek CJ

Counsel:

- Mr George Boar for the Petitioner, Jean Kalomule Ravou Akii, in Election Petition Case No.01 of 2012
- Mr John William Timakata for the Petitioner, Vatout Maliu Maliare, in Election Petition Case No.05 of 2012
- Mr Frederick Gilu, Acting Attorney General for the First and Second Respondent in both Election Petitions
- Mr Daniel Yawha for the Third Respondent



JUDGMENT

Before the Court are two (2) Election Petitions filed by two petitioners pursuant to section 62 of the Representation of the People's Act [CAP.146] ("the Act"). The two Petitioners were candidates at the Parliamentary elections held on 30 October 2012 and they both contested the election held in the Constituency of Santo Rural.

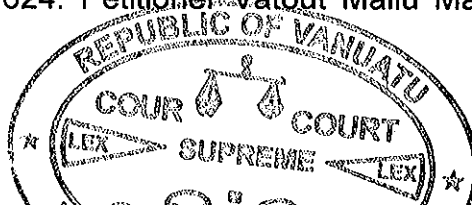
Section 62 of the Act provides:

"62. Examination of votes cast

When on an election Petition the election is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes the Supreme Court may direct an examination of the counted and void votes and of the counting of votes."

In the first Petition, (EP Case No.01 of 2012), the Petitioner, Jean Kalomule Ravou AKII claimed that he had a majority of lawful votes than the Third Respondent, Hosea Nevu. Hosea Nevu was also contesting the elections of 30 October 2012 in the Santo Rural Constituency and was declared the 7th successful elected candidate for Santo Rural Constituency by the Electoral Commission on 6 November 2012. The official results of the 30 October 2012 elections showed that the Third Respondent, Thomas Nevu, obtained 672 valid votes and Petitioner Jean Kalomule Ravou AKII had obtained 671. One vote difference between the two. Petitioner Jean Kalomule Ravou AKII alleged that the unofficial results of the Parliamentary elections of 30 October 2012 held in the Santo Rural Constituency showed that he had obtained 665 votes while the Third Respondent, Thomas Nevu obtained only 647. That is the basis of his Petition before the Supreme Court for an examination of votes cast pursuant to s.62 of the Act.

In the second Petition (EP Case No.05 of 2012), the Petitioner Vatout Maliu Maliare claimed that he had obtained more lawful votes than the Third Respondent, Thomas Nevu. The official results of the Parliamentary elections of 30 October 2012 held at the Santo Rural Constituency showed that the Third Respondent, Thomas Nevu, had obtained 672 lawful votes while he had only 624. Petitioner Vatout Maliu Maliare



claimed that the unofficial tally of votes result for the Constituency of Santo Rural Constituency showed that he had obtained a majority of lawful votes tallying to a total of 695 votes.

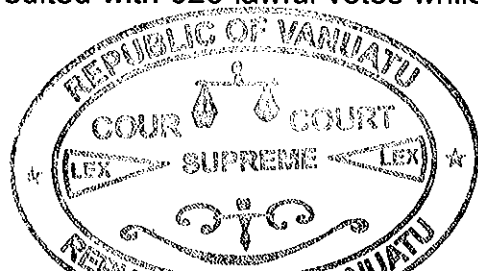
That is the basis of Vatout Maliu Maliare's Petition seeking an examination of votes cast under s.62 of the Act.

For obvious reasons, both election petitions were joined, managed and heard together by the Supreme Court. Orders and directions were issued for examination of votes cast pursuant to s.62 of the Act in respect to the two Election Petitions. The Supreme Court provided detailed guideline to assist the examination process. An Examination Committee was appointed to proceed with the examination of counted and void votes and of the counting of votes. The Committee is directed and required to submit a report to the Supreme Court on the process of examination and their findings on the examination of counted and void votes and examination of the counting of votes. The Report is a confidential one and is provided in a sealed envelop to the Supreme Court.

The Examination Committee provided a report and it was received by the Supreme Court on 30 January 2013. All parties in both Election Petitions are notified to attend a conference on Tuesday 5 February 2013 before the Supreme Court at Dumbea at 8.30am. A copy of the Report was provided to each of the parties and the Court gives them an opportunity to comment or make submissions on the Report. The Court hears and considers the submissions of the parties.

The Report shows that the Examination of votes cast in respect to Parliament elections of 30 October 2012 in the Constituency of Santo Rural, was thoroughly undertaken by the Examination Committee.

The Report shows the declared votes cast for the Third Respondent, Thomas Nevu, was 672 but on the recount the total valid votes of the Third Respondent is 671. The Report shows that the total valid votes for Petitioner Jean Kalomule Ravou AKII is 670 while he was declared a total lawful votes of 671 by the Electoral Commission. Petitioner Vatout Maliu Maliare is found to be credited with 623 lawful votes while he was declared obtaining 624 by the Commission.



In fine, the examination of the votes cast pursuant to s.62 of the Act reveals that the Third Respondent, Thomas Nevu, Petitioner Jean Kalomule Ravou AKII and Petitioner Vatout Maliu Maliare were credited with the following lawful votes:

- Thomas Nevu, Third Respondent - 671;
- Jean Kalomule Ravou AKII, Petitioner in EP Case 01 of 2012 - 670;
- Vatout Maliu Maliare, Petitioner in EP Case 05 of 2012 - 623.

The test to apply in such an exercise is that if the number of miscounted votes exceeds the plurality of votes cast, the election cannot stand.

The Court accepts the findings of the Examination Committee contained in the report referred to above. Applying the test in both election petitions, each Election Petition cannot succeed. Each and both Election Petitions fail.

ORDERS

1. The declarations and orders sought by both Petitioners respectively in Election Petition Case No.01 of 2012 and Election Petition Case No.05 of 2012 are denied;
2. Election Petition Case No.01 of 2012 and Election Petition Case No.05 of 2012 are each dismissed.
3. The Electoral Commission shall issue a declaration published in the Official Gazette within 7 days as from the date of this Judgment to effectuate the alterations of the total number of votes obtained by the Third Respondent, Thomas Nevu; Petitioner Jean Kalomule Ravou AKII and Petitioner Vatout Maliu Maliare as reflected in this Judgment;
4. There is no order as to costs.

DATED at Port-Vila this 5th day of February 2013

BY THE COURT

**Vincent LUNABEK
Chief Justice**

