

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

**Election Petition Case No. 09 /2012**

**BETWEEN: WILLIE JIMMY**  
*Petitioner*

**AND: SATO KILMAN**  
*First Respondent*

**AND: PRINCIPAL ELECTORAL OFFICER**  
*Second Respondent*

**Election Petition Case No. 19 /2012**

**BETWEEN: DANIEL MOLISA**  
*Petitioner*

**AND: SATO KILMAN**  
*First Respondent*

**AND: PRINCIPAL ELECTORAL OFFICER**  
*Second Respondent*

**Hearing:** *28 and 29 January 2013*

**Before:** *Hon. Justice Robert Spear*

**Appearances:** *Willie Daniel for the Petitioner in each case  
Nigel Morrison for the First Respondent in each case  
Avock Godden for the Second Respondent in each case*

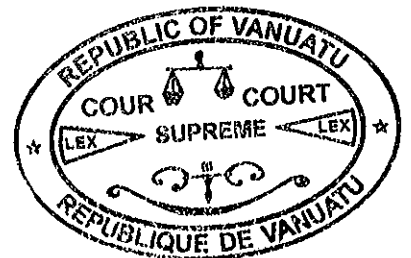
**Delivered:** *8 February 2013*

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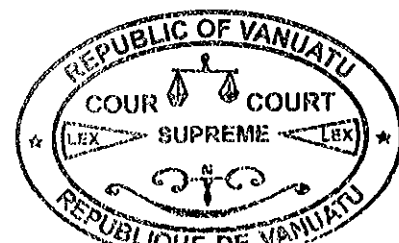
**JUDGMENT**

**Application to Amend Petition  
Standing to Present Petition**

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1. At the general elections for Vanuatu conducted on 30 October 2012, the first respondent Sato Kilman was the highest polling candidate for the 5 available seats in the Malekula constituency and he was duly elected to Parliament. Within 21 days of the publication in the Gazette of the results of the election, the abovenamed petitioners each presented an election petition to this Court challenging the validity of Mr Kilman's election.
2. The election petitions are effectively identical except for the name of the petitioner. They assert that Mr Kilman was not eligible to stand as a candidate for election to Parliament by reason that he was an undischarged bankrupt and that he was in substantial debt to the State for outstanding rent in respect of a particular residential lease.
3. At the first hearing of the petitions before the Chief Justice on 4 December 2012, Mr Daniel applied to amend the petitions. Those applications to amend the petitions were and remain opposed by both respondents.
4. For various reasons not germane to the issues before me, the Chief Justice then disqualified himself from further involvement in the two cases and they were allocated to me.
5. The first preliminary issue to be addressed is accordingly whether the Court should permit the petitions to be amended. Mr Daniel initially conceded at the commencement of the hearing that, if the Court was not disposed to permit the amendment of the petitions, there was no evidence that Mr Kilman was a bankrupt and accordingly he could not oppose the dismissal of the petitions. However, as matters progressed, it became clear that there were other issues that needed to be addressed. In particular, whether the petitions did have to be amended in order for Mr Daniel to advance the challenge to Mr Kilman's election to Parliament on the grounds that he owed money to the State. Furthermore, whether either petitioner had standing to present his petition in the first place.

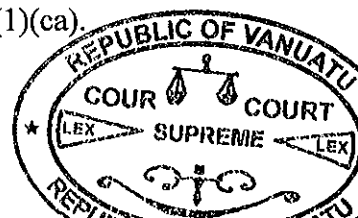


6. The petitions presented in each case are identical in so far as substance is concerned:-

*"2. I claim that Sato Kilman was not validly elected for the seat of Malekula Constituency at the election because:*

1. *The candidate was at the time of his election a person not qualified for election pursuant to section 24(1)(c) of the Representation of the People Act [CAP 146] (hereinafter referred to as the Act).*
2. *The Facts on which the petition is based are:*
  - (i) *Pursuant to Section 24(1)(c) of the Act, 'subject to Section 23, a person shall be eligible to stand as a candidate for election to Parliament if he –*
    - (a) *.....;*
    - (b) *.....;*
    - (c) *is not an undischarged bankrupt;*
    - (d) *.....;*
    - (e) *.....'*
  - (ii) *On 10<sup>th</sup> October 2012 when the Electoral Commission as evident by Official gazette No. 15 dated 11 October 2012, approved and published the lists of Qualified candidates for the General Election of 30<sup>th</sup> October 2012, Sato Kilman, the First Respondent's name was not included in the lists of candidates eligible to contest in the constituency of Malekula.*
  - (iii) *By Official Vanuatu government invoice No. 12-002310 Dated 11/07/2012, the First Respondent owes the Government of Vanuatu outstanding rents for Residential Lease Title No. 11/OG21/037 in the amount of VT 13,000,000.*
  - (iv) *The stated outstanding is for rents dating from November 1990 to June 2012 as evident from official Government invoices 07-008495 dated 13/09/2007, 09-000556 dated 18/02/2009, 11-005703 dated 13/07/2011 & the above-stated invoice in paragraph (iv).*
  - (v) *By Official Vanuatu Government receipt No. 602422 dated 28/08/2012, the First Respondent paid an amount of VT 940,275 for CT No. 107615 which is for the same property in issue (i.e. title 12/OG21/037).*
  - (vi) *On 29/08/2012, the First Respondent paid another amount of VT 123,000 to the Vanuatu Government for lease title No.11/OG21/037 as evident from official government receipt No. 602535."*

7. The amendment sought by Mr Daniel is to substitute the reference to s. 24(1)(c) of the Representation of the People's Act [Cap.146] with s.24(1)(ca).



8. Before turning to the merits of otherwise of the applications for amendment, it is necessary to have brief regard to the legislative framework within which the application should be considered.
9. The eligibility of candidates for an election is set out in s.24 of the Act. By the time of the 2006 consolidation of legislation, s.24 appeared in this form:

***“24. Eligibility of candidates***

*(1) Subject to section 23 a person shall be eligible to stand as a candidate for election to Parliament if he –*

- (a) is not disqualified from voting;*
- (b) has not received a sentence including a suspended sentence of a term or terms of imprisonment which has not ended;*
- (c) is not an undischarged bankrupt;*
- (d) has attained 25 years of age; and*
- (e) is a citizen.*

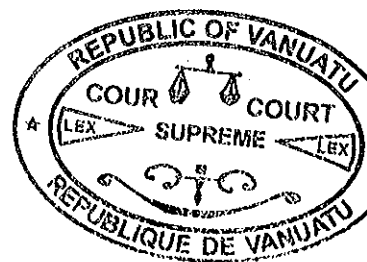
*(2) The Electoral Commission may after consultation with the Council of Ministers add other persons or classes of persons to subsection (1).”*

10. Those disqualified from voting under s. 24 (1) (a) are as specified in section 23 of the Act:

***“23. Persons disqualified from being Parliamentary candidates***

*(1) The following persons shall not be qualified as candidates for election to Parliament –*

- (a) the President of the Republic;*
- (b) judges and magistrates;*
- (c) members of the police force;*
- (d) members of the National Council of Chiefs, any member of the District Council of Chiefs, Island Council of Chiefs and Area Council of Chiefs, who holds the position of chairman, vice-chairman, secretary or treasurer of these councils;*
- (e) public servants;*
- (f) members of the teaching service; and*
- (g) members of the Citizenship Commission.”*



11. In 2007, section 24 was amended by the addition of subsection 24 (1) (ca) so that it read as follows:

***“24. Eligibility of candidates***

- (1) *Subject to section 23 a person shall be eligible to stand as a candidate for election to Parliament if he –*
- (a) *is not disqualified from voting;*
  - (b) *has not received a sentence including a suspended sentence of a term or terms of imprisonment which has not ended;*
  - (c) *is not an undischarged bankrupt;*
  - (d) ***(ca) is a person who is not in default of any rates, charges or other debts due to the Government or a Government agency as defined in the Public Finance and Economic Management Act [CAP 244] , for a period exceeding 2 months after the same becomes due;***
  - (e) *has attained 25 years of age; and*
  - (f) *is a citizen.*

(2) . . .”

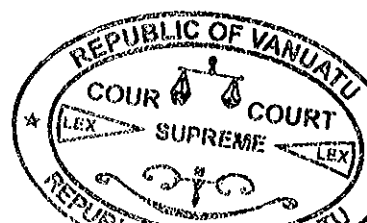
(emphasis added)

12. Mr Daniel conceded that Mr Kilman was not a bankrupt at any material time and accordingly the petitions could never succeed on that ground. However, Mr Daniel argued that the petitions still specified the grounds that established a challenge under s.24(1)(ca) and that the legislative scheme relating to election petitions would not be subverted by permitting (what he contended was) a relatively minor change to be made to the petition.

13. The principal reason why the application for amendment is a matter of such significant moment is the time limit prescribed by s. 57 of the Act for the presentation of the petitions. Section 57 generally prescribes a maximum period of 21 days for the presentation of an election petition from the date that the results of the election are published in the Gazette. Furthermore, s. 57(3) specifically states that the 21 day limitation period shall not be extended:

***“57. Time for presentation of petitions***

- (1) *Subject to subsection (2) an election petition shall be presented within 21 days of the publication in the Gazette of the results of the election to which the petition relates.*



*(2) If a petition alleges a specific payment of money or other reward after an election by or on the account of a person whose election is disputed, the petition may be presented within 21 days of the alleged payment.*

*(3) The time limit provided for in this section shall not be extended”*

14. Both this Court and the Court of Appeal have had opportunities to consider applications to amend an election petition. It is unnecessary to go beyond the decision of the Court of Appeal in *Jimmy v. Rarua*<sup>1</sup> in 1998 that considered the general approach to be adopted by this Court when considering an application to amend an election petition.

15. *Jimmy v Rarua* related not to an eligibility issue (as is the case here) but whether the election concerned had been affected by corrupt practices (as defined in ss. 44 – 48 of the Act. Be that as it may, the Court of Appeal took the opportunity to consider the issue of amendment to petitions in a general way. The Court of Appeal conducted (what it described as):

*“... a comprehensive and exhaustive analysis of a number of decisions. Many were cases decided last century in a number of jurisdictions. These were presented to us to assist us to define how s. 57 should be interpreted”.*

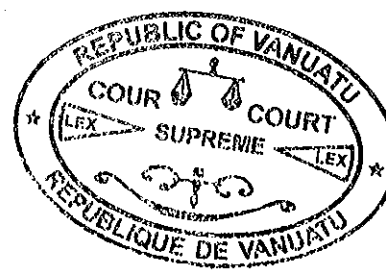
16. The Court of Appeal emphasised that the correct interpretation of s. 57 arose from a plain reading of the words:

*“The starting point in any statutory interpretation is clearly the words of the section itself. Upon a plain reading of the words we are satisfied that the Parliament in this jurisdiction has determined that when there is an election petition there is to be enumerated within the 21 period (from which there can be no extension) a clear statement of the matters complained of.”*

17. The Court agreed with various decisions of this Court that the 21 day period was absolute and that it could not be extended.

18. In *Jimmy v Rarua*, the Court of Appeal also rejected any suggestion that Rule 25 of the Election Petition Rules 1998 permitted amendment to a petition outside that mandatory 21 day period:

<sup>1</sup> [1998] VUCA 4; Civil Appeal Case 02 of 1999 (23 April 1998)



*"In the instant case the learned trial Judge appears to have placed particular reliance upon the provision of Regulation (should be Rule) 25 of the Election Petition Rules 1998 which provides:-*

***'25. Postponement of trial and amendment of petition***

*A Judge may from time to time, by order made upon the application of a party to the petition, postpone the beginning of the trial to such a day as he may name and may at any time before or during the trial, upon the application of the petitioner, allow the petition to be amended upon such terms and conditions as may be just. Such applications shall be made by motion on notice to the other party to the petition.'*

*The Election Petition Rules are made pursuant to the powers under section 59(1) of the Representation of the People Act. They can never modify or alter the provisions of the Act. We reject the conclusion that they effect a modification of a statutory condition contained in s.57. Section 8 of the Interpretation Act does not allow that approach. The Interpretation Act cannot be used to amend the clear meanings of unambiguous words of a statutory provision."*

19. *Jimmy v. Rarua* concluded with a consideration as to whether the amendment sought was more exactly a qualification of what was already in the first petition. The Court of Appeal accepted that some amendment could be permitted in the sense of fine tuning the grounds already specified:

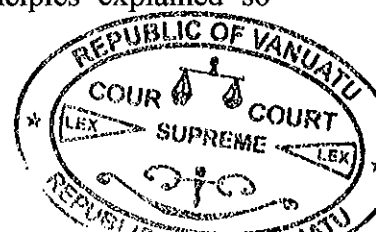
*"Finally, it was contended that almost all of what was included in what the Court permitted the petitioner to amend was only to qualify what was included in the first petition.*

*It may well be that a degree of particularizing or better defining specific allegations already made within the 21 period is not objectionable".*

20. The Court of Appeal also noted in its judgment that there was an issue as to whether it had jurisdiction to consider the appeal given s.63(2) of the Act:

*"63(2) There shall be no appeal from a decision of the Supreme Court under this part"*

21. That prohibition notwithstanding, the appeal was heard on the assumption that the Court of Appeal had jurisdiction to hear the appeal and on the basis that counsel accepted that this was not the appropriate time to question the constitutionality of that prohibition by s.63(2) against appeal. Irrespective of whether the Court of Appeal had jurisdiction to consider the appeal or not, I respectfully accept and adopt without hesitation the principles explained so clearly by the Court of Appeal in these particular respects.



22. As mentioned, *Jimmy v. Rarua* concerned a petition alleging corrupt practices. What was sought to be substituted, by way of amendment to the first petition, were different corrupt practices from that stated in the initial petition. That was not permitted as the Court considered that to allow such an amendment would be to subvert,

*“the mandatory provisions of s.57(3) of the Act.”*

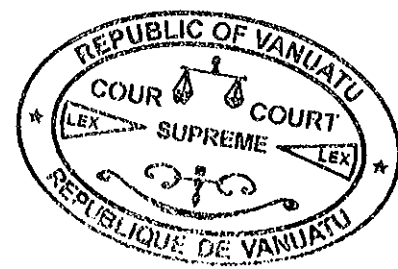
23. With those principles and guiding observations firmly in mind, I note further that each case involving an application to amend an election petition will necessarily turn on its own particular facts. It will require an assessment of the nature and extent of the amendment that is sought.

24. It is noted that the sworn statements of the petitioners in support of their petition were not filed until 16 January 2013. This was in clear contravention of Rule 2.2(2)<sup>2</sup> which requires that the petition must have with it, when filed, a sworn statement by the petitioner setting out details of the evidence that the petitioner relies on together with any other sworn statement that supports the petition.

25. While the contravention of the rules in that respect cannot be placed at the same level as contravention of or non-compliance with a mandatory provision of the Act, non-compliance with the rules is likely to result in the petition being dismissed if the Court is not able to be satisfied, at the first hearing (Rule 2.6), that there is a proper foundation for the petition. The good reasons behind the Court making a preliminary assessment of the merits of the case at such an early stage are obvious and in line with the reasoning behind the mandatory 21 day limitation period prescribed for the filing of petitions. Parliament clearly intended that election petitions would be dealt with expeditiously and that, where an election petition was not able to be assessed by the Court as having merit at an early stage and requiring a hearing, it should be dismissed.

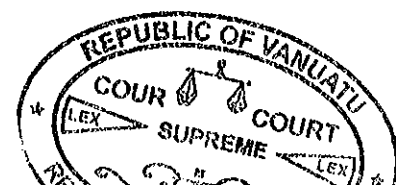
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<sup>2</sup> *Representation of the People Election Petitions Rules [CAP 146]*





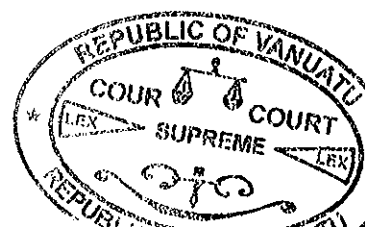
26. In this relatively small sovereign country that is governed by a Parliament of only 52 members, there is an obvious need for any uncertainty as to the validity of the election of a member of Parliament to be resolved without delay. Such uncertainty could have a destabilising effect on the functioning of Government. Indeed, that is more likely to be so in this case where Mr Kilman retained his position within Parliament as the Prime Minister.
27. Those who wish to bring such a challenge by way of an election petition must be prepared to present their best and complete case within the 21 day limitation period. While some latitude may be permitted for good cause with the time for the filing of the sworn statement in support, if the evidence is not available by the time of the first hearing then it is difficult to see why the Court should permit the petition to progress.
28. However, a first hearing was attempted in both cases on 4 December 2012 before the Chief Justice. That first hearing was abandoned because of the need for Mr Daniel's applications to amend the petitions to be heard as a preliminary issue and also because the Chief Justice had disqualified himself from further involvement in either case.
29. The principal argument for Mr Daniel, in support of the amendment to the petition, is that the omission to include s. 24(1)(ca) as the basis for the petition was a relatively minor and obvious mistake and that, in any event, the petition clearly stated the facts upon which the petition was based: specifically, that Mr Kilman owed rental of Vt 13 million to the State, and that this debt was outstanding for more than 2 months at the time that he lodged his declaration of candidature (s. 25).
30. It can be noted that Mr Kilman was originally considered by the Principal Electoral Officer not to be eligible to stand for Parliament because of this outstanding rental but that decision was eventually reviewed by the PEO resulting in Mr Kilman being accepted as a candidate. That is, however, quite by-the-by as the decision of the PEO in that respect can be of no assistance to me.



31. Mr Morrison drew the Court's attention to a Minute of the Chief Justice in another election petition case arising out of the 2012 general elections: *Binurua v. Hilton and Principal Electoral Officer*<sup>3</sup>. It is of some interest, but nothing more, that Mr Daniel appeared for the petitioner and Mr Morrison for the first respondent. The same mistake that Mr Daniel accepts was made in the instant cases was also evident in that case. The petition had been presented on the basis that the first respondent was ineligible to stand as a candidate as he was "*an undischarged bankrupt*". No evidence was presented by the time of the first hearing much less evidence establishing even a prima facie case that Mr Hilton was a bankrupt at the relevant time. Mr Daniel applied orally for leave to amend the petition again by substituting s. 24(1)(ca) for s.24(1)(c) just as he has done in these cases before me. However, State counsel informed the Court from the Bar that the State Law Office was not aware of any claims or debts owing by Mr Hilton to the Government of Vanuatu and so an issue arose as to whether the petition could succeed if amended. Chief Justice concluded that as there was no evidence that Mr Hilton was a bankrupt, it was unnecessary to address the application for amendment of the petition. The petition in that case was struck out. That case cannot, for that reason, be taken as providing any guidance on the approach required here.
32. A consideration of the petitions filed here clearly identifies that what is alleged is that Mr Kilman was at the material time in default in respect of money owed to the Government or one of its agencies. The amendment is only to correct the subsection under which the question of eligibility is sought to be examined.
33. This is not a case where new or fresh grounds or facts are raised beyond those specified in the initial petitions. It is obvious that the petitions were intended to be considered on the sole basis that Mr Kilman owed a debt to the Government which had been outstanding for over 2 months. I do not consider that a challenge as important as this should be thwarted by a simple and obvious mistake as to the subsection that was to be relied on.

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<sup>3</sup> Election Petition Case No. 11 of 2012: Minute dated 7 December 2012



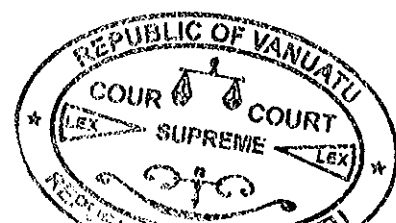
34. There is nothing in the petition that indicates an intention on the part of either petitioner to establish that Mr Kilman was bankrupt beyond the mistaken reference to s.24(1)(c) instead of s.24(1)(ca). I fail to see what prejudice could be suffered by the respondents if the amendment is allowed. Certainly, none was argued. Instead, the respondents took the narrow path of arguing that because the statutory reference was to s.24(1)(c), that could not be changed. I do not accept that submission particularly as all the factual averments appearing in paragraphs 2(ii) to (vi) are clearly indicative of the eligibility challenge being brought under s.24(1)(ca).
35. Accordingly, I accept that this is one of the relatively rare occasions where a petition should be permitted to be amended. To do so in this case would not cause offence to the legislative scheme within which election petitions must be brought.
36. The petitions are accordingly amended so that the reference is now to s.24(1)(ca) and not s.24(1)(c).
37. The next issue is whether either petitioner had standing to present his petition in the first place – amended or not. Section 55 of the Act limits the class of person who is permitted to present an election petition that challenges the validity of an election:

***55. Persons who may present election petitions***

*An election petition may be presented by one or more of the following –*

- (a) a person who is registered to vote at the election to which the petition relates;*
- (b) a person claiming himself to have been a candidate at such election.*

38. Section 55 is within Part 16 of the Act which part prescribes a relatively tight legislative regime to govern any challenge to the validity of an election. This is evident just from a consideration of the heading to each of the sections found in Part 16:



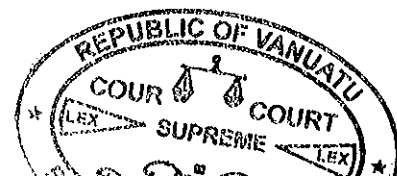
- s.54 *Elections only to be challenged under this Act;*
- s.55 *Persons who may present election petitions;*
- s.56 *Petition only valid if deposit paid*
- s.57 *Time for presentation of petitions;*
- s.58 *Election petitions to be in writing and copies to be served on affected persons;*
- s.59 *Rules for election petitions*
- s.60 *Decisions of Court in election disputes*
- s.61 *Grounds for declaring election void*
- s.62 *Examination of votes cast*
- s.63 *Communication of decision of Court concerning election disputes*
- s.64 *Reports to Public Prosecutor*
- s.65 *No person required to reveal his vote*

39. The initial submissions for the PEO in this respect was that neither petitioner had standing to present a petition under s.24(1)(ca) as, “it is the duty of the State to enforce subsection 24(1)(ca)”. That is, as the debt was owed to the Government, only the Government (effectively) could raise a challenge to the validity of an election on this basis. State counsel then made reference to civil proceedings that have been brought in this Court by the Attorney General on behalf of the Republic of Vanuatu for the recovery of this debt and which proceedings remain extant.

40. I do not accept this argument. The Act is not restrictive in that manner. Such a restriction would need to be expressly provided before a person’s statutory right to challenge an election could be considered as so limited.

41. This issue of standing, however, developed during the course of the hearing. It became focussed on whether either petitioner was eligible under s.55 to present his petition in the first place. Mr Daniel sought time to give further consideration to this development. The Court reconvened the following morning and received further written submissions from Mr Daniel.

42. The issue became whether s.55 is to be construed as effectively localising the eligibility to challenge. That is, does s.55 mean that a petitioner must be either a person who was registered to vote in the particular constituency to which the petition relates, or a person who was a candidate in that constituency? If so, that would mean that neither of the petitioners had standing to present his petition.



Mr Kilman stood for a seat in the Malekula constituency. It is conceded by counsel for the petitioners that neither petitioner was either registered to vote in the Malekula constituency nor was either petitioner a candidate for a seat in the Malekula constituency.

43. This issue does not appear to have been considered by the Courts before. It is clearly an important point in respect of which clarity is required.
44. Section 8 of the Interpretation Act [Cap 132] is the starting point.

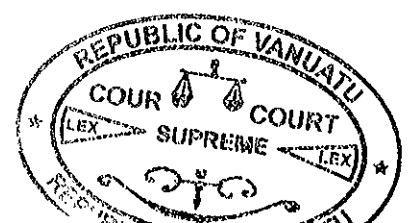
### ***8 General principles of interpretation***

*An Act shall be considered to be remedial and shall receive such fair and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit.*

45. As previously mentioned, *“the starting point in any statutory interpretation is clearly the words of the section itself.”*<sup>4</sup>
46. Section 55 is permissive as to who is effectively entitled to present a petition. It is clear and unambiguous that no-one outside those qualifying under S.55(a) or (b) is entitled to petition.
47. Section 55(a) first restricts the eligible class to those who are, *“registered to vote at the election to which the petition relates”*. Mr Daniel argued that the reference to “election” is a reference in this case to the national or general elections that were held throughout Vanuatu on 30 October 2012.
48. What is meant then by the term, *“... election to which the petition relates”*? I cannot understand how that can mean anything other than a reference to the election under challenge. In this case, that must refer to the election of Mr Kilman to a seat for the Malekula constituency as, of course, that is what is under challenge by the petitions.

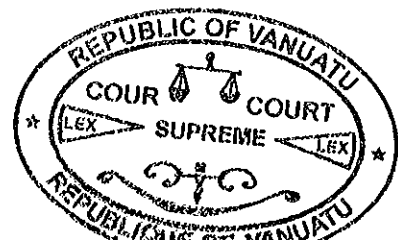
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<sup>4</sup> *Ibid*, para 16



49. If Mr Daniel was correct and that “... *election to which the petition relates*” means, in respect of a general election, anyone who is registered to vote in any constituency in Vanuatu, the qualification of “*election*” by “*to which the petition relates*” must be seen as superfluous. All that would then be needed would be a provision which establishes eligibility to, “*a person who is registered to vote at the election*”.
50. I do not accept the argument that this qualification of “*election*” in s.55(a) is to ensure that a person registered in a previous election is not, without current registration, eligible to present a petition. The 21 day limitation period for presenting a petition ensures, in a practical way, that there would be no confusion as to which election is under challenge.
51. When regard is then had to s.55(2), the position becomes even clearer. If Mr Daniel’s argument is correct, there would be no need for s.55(2) – the second but additional class of eligibility, “*a person claiming himself to have been a candidate at such election*”. Mr Daniel’s argument requires acceptance of the possibility that a person may be a candidate at an election but is not registered to vote at that election. I do not accept that this was in Parliament’s contemplation when it passed this Act. The purpose of s.55(2) is to recognise the special qualifications required for a person wishing to contest an election in a rural constituency.
52. A person wishing to contest an election in a rural constituency must be a native or a person originating from that rural constituency. A rural constituency means a constituency other than Port Vila or Luganville (or any other constituency declared so by the President)<sup>5</sup>. An origin qualification does not apply to candidates for election in a non-rural constituency such as Port Vila or Luganville
53. The word “*election*” is used variously throughout the Act to refer to general elections, election for a constituency, the election of a particular person and a by-

<sup>5</sup> Section 23A Representation of the People Act [Cap 146]



election. However, Part 16 deals with election petitions and it uses the term, “*election to which the petition relates*” which term, unsurprisingly, is not employed in other parts of the Act. Part 16 encompasses ss. 54 to 65

54. Section 60 prescribes the possible outcome to an election petition,

**60 Decisions of Court in election disputes**

(1) *On hearing a petition the Supreme Court may -*

(a) *declare the election to which the petition relates is void;*

(b) *declare a candidate other than the person whose election is questioned was duly elected; or*

(c) *dismiss the petition and declare that the person whose election is questioned was duly elected.*

(2) *The Supreme Court may make such orders as to the payment of costs by any person appearing before it as it may deem fit.*

55. Section 61 limits the grounds on which this Court may declare an election void.

**61. Grounds for declaring election void**

(1) *The election of a candidate may be declared void on an election petition if it is proved to the satisfaction of the Supreme Court, that –*

(a) *bribery, treating, undue influence or other misconduct or circumstances whether similar to those herein before enumerated or not, have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;*

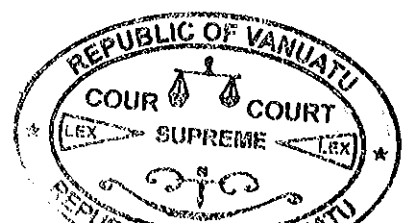
(b) *there has been such non-compliance with the provisions of this Act, in the conduct of polling or in any other matter that such non-compliance affected the result of the election;*

(c) *the candidate was at the time of his election a person not qualified or disqualified for election; or*

(d) *there was such irregularity in the counting of the votes as may reasonably be supposed to have affected the result of the election.*

(2) *The election of a candidate shall be declared void if he is convicted by a Court of committing a corrupt practice or of attempting or conspiring to commit a corrupt practice.*

(2) ...”



56. The interplay between s 60(1)(a) and s.61(1) points to “*election*” in Part 16 as referring to the election of an individual to a seat in Parliament for a particular constituency. The term, “*election to which the petition relates*” in s.55 (a) must accordingly refer and apply only to the electoral process in a constituency that saw the person gain a seat in Parliament.
57. In this case, s.55(a) accordingly restricts a petition being presented in respect of Mr Kilman’s election to Parliament to those registered to vote in the Malekula constituency or to a person who was a candidate at the election for one of the Malekula seats.
58. As neither petitioner here was registered to vote in the Malekula constituency and furthermore neither petitioner was a candidate in that constituency, it follows that they were not entitled to present a petition against the election of Mr Kilman. In short, they had no standing to bring their petitions.
59. Accordingly, both petitions are struck out.
60. Unless counsel are able to agree on costs, I will receive memoranda on that issue within 14 days. This case developed in to an examination of a statutory provision of great significance and one which had not previously addressed by the Courts. In such cases, the State will often accept the responsibility of costs for all the parties to reflect the general or national assistance that the resolution of the tested issue now provides. While s.60(2) gives the Court a wide discretion on the question of costs, it can be hoped that counsel will be able to resolve this issue without further reference to the Court.

**BY THE COURT**

