

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

**CIVIL CASE No.64 OF 2010**

**BETWEEN:** NIPAKE EDWARD NATAPEI MP,  
President of the Vanuaaku Pati of Port Vila,  
Vanuatu

*First Claimant*

**AND:** NIPAKE EDWARD NATAPEI, JOE  
NATUMAN, THOMAS ISOM, SELA  
MOLISA, PHILIP BOEDORO, BAKOIA  
KALTONGGA, MAKI SIMELUM, ALBERT  
MILLER, JONATHAN NAUPA,  
AUGUSTINE GARAE, ALBEA NALISA,  
CHRISTINA WILSON, MARGARETT  
SOLOMON, JACK MANUEL, LAMI SOPE,  
KEN HOSEA, NIKEKIKE VUROBARAVU,  
ATIS KALO, AVIO ROBERTS, PETER  
SAKITA, JOHN TESEI, WILSON TERI,  
DICKSON KAHUA, LEINAFU TASSO,  
ANDREW KAUSIAMA, JERRY ESROM,  
BOB LOUGHMAN, PHILIP CHARLEY

**AND:** *Second Claimants*

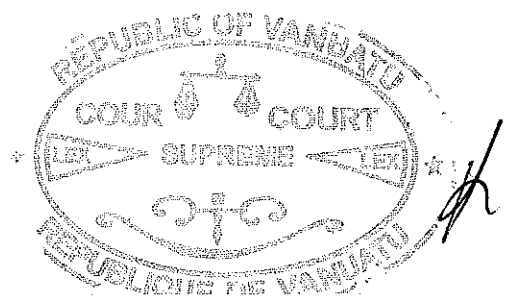
HARRY IAUKO MP, C/- of Port Vila, Efate,  
Republic of Vanuatu

**AND:** *First Defendant*

MANUA IAIOFA, DANIEL BULE,  
BATISTE FIRIAM, LOUIS CARLOT,  
JERRY KANAS, JOHN NOEL, JACKSON  
WHITE, ERIC MOSES, DICKSON  
ARAHAMBAT, ERICSON MANAR, VUTI  
TAKASI, LIVO LANGI, SAM VIJI, JEROM  
TARI, SEDACK SHEM, PAUL AVOCK  
HUNGAI, MARTIN IAPATU, ROEL  
MARAFI, JOHN SANGA, TOM NIAVIA,  
IAMEUH JIMMY, LEONARD SAM, TERI  
MAKI, TONI NARI, JACOB MATA, KARL  
DAVID, JOSEA IAPSE, ROGER ABIUT,  
WILLIE REUBEN ABEL, MERELYN  
ARHNAMBAT ABEL.

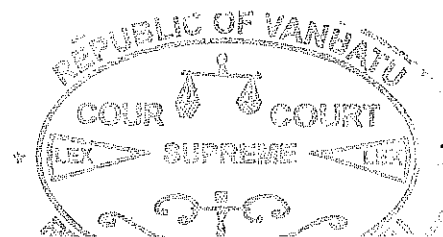
*Second Defendants*

*Corum: Vincent Lunabek Chief Justice  
Mr. Edward Nalyal for the first and second claimants.  
Mr. Silas Hakwa for the first and second Defendants*



## REASONS FOR ORDERS OF 9 OCTOBER 2012

1. On 9 October 2012, the Court made declarations and orders on the 3 remaining issues in this case in favour of the claimants. The reasons of these orders are provided hereunder.
2. This case concerns internal division that had arisen within the Vanuaaku Pati (VP). The case is about the application of VP Constitution. The claimants filed their claim against the first and second defendants on 19 May 2010. They have filed an amended claim on 5 February 2011. They challenge the legality of the VP congress held at Lumbukuti village, Tongoa by the defendants on 2 April 2010. The claimants claim for the following:
  1. *A declaration that lauko faction meeting, as a congress of the VP, was null and void.*
  2. *A declaration that the purported election of the First defendants as President, at the lauko action meeting, was null and void.*
  3. *A declaration that the purported election of the VP executive council at the lauko faction meeting was null and void.*
  4. *An order that the first defendant be restrained from holding himself out as the President of the Vanuaaku Pati (VP), and from purporting to exercise any powers of the VP President as provided in the VP Constitution.*
  5. *An order that the second Defendant Willie Reuben Abel MP be restrained from holding himself out as the President of the VP, and from exercising any powers of Vice President of the VP as provided in the VP Constitution.*
  6. *An order that all the other Defendant and persons purportedly elected to the VP executive council is restrained from holding themselves out as the executive council of the VP as provided in the VP Constitution.*
  7. *An order that the first and second defendants be restrained from using the name Vanuaaku Pati or VP in any way whatsoever.*
  8. *Damages against all the defendants.*
  9. *Any other orders this Court considers just.*
  10. *Cost of this proceeding shall be paid by the defendants.*
3. The claimants filed a total of 27 sworn statements in support of the amended claim. The first and second defendants file a statement of Defence to the claim on 7 March 2011. They deny the claim of the claimants and challenge the legality of the VP 37<sup>th</sup> congress held at Panita. They say that it was not a VP congress. The Defendants filed a total of 20 sworn statements in support of the Defence. The Supreme Court had determined an important preliminary question of the interpretation of the VP Constitution between the parties on 6 July 2012 which was confirmed on appeal by the Court of Appeal on 14 September 2012.



4. Below are some common non-contentious grounds:- VP, the Vanuaaku Pati, is a political party in Vanuatu of very long standing indeed having regard to the relatively short history of the Republic of Vanuatu. It is one of the major political parties of this Country and it has been so for many years. All the parties in this case are members of Vanuaaku pati.

5. At the 36<sup>th</sup> Congress of VP held on Ifira in August 2007, Nipake Natapei was elected President, Sam Dan Avock as Vice President, and Joe Natuman as second vice President and other second respondents as members of the Executive Council. Joe Natuman became Vice President of VP after the resignation of Sam Dan Avock as Vice President. The Constitution of VP required that the National Congress of VP met at least once a year. One of the functions of Congress is to elect persons to fill any vacancies on the Executive Council recognising that those members of Executive Council are elected for a term of 2 years. Article 3D (iv) of the VP Constitution provides:-

*“ (iv) Members of the Executive Council shall be elected by the Congress for a term of two years and in the event that a member’s term of office expires before the convening of the next Congress to elect new members’ that member shall continue to perform the duties and functions of a member, until new election of members are made by the congress.”*

6. Article 5 (c) and (d) of the VP Constitution provides:

*“Officers of the party are elected for a term of 2 years by the Congress. When the term of the officers expires the officers hold office until incoming officers are elected.”*

7. The 2007 Ifira Congress resolved that the venue of the next congress in 2008 would be held on Tongoa and that the Executive Council would decide the date and time of the Congress.

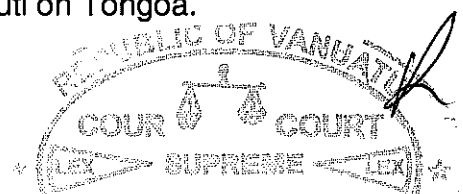
8. There was no Congress organised by the Executive Council in 2008 and 2009. A number of disciplinary measures or decisions were taken by the VP disciplinary board against the first and second defendants.

9. Certain members of the party commenced proceedings in this Court to require the Executive Council to convene a meeting of Congress. On 5 February 2010, the following orders were made:

1. *That the (Executive Council) call or convene a meeting of the Congress of (VP) on 1 April 2010 on the island of Tongoa.*

2. *That the (Executive Council) forthwith take such steps as are necessary and in accordance with the Constitution so as to ensure that the Congress is lawfully convened at Lumbukuti village on Tongoa beginning 1 April 2010.*

10. In the further proceeding in Civil case no 42 of 2010, the Court issued consent orders to the effect that the defendants shall be allowed to attend the VP Congress for the sole purpose of being heard on any consideration of expulsion relating to them. The Congress was convened on 1 April 2010. It was opened by Mr Nipake Edward Natapei, acting as the President. The venue was Lumbukuti on Tongoa.

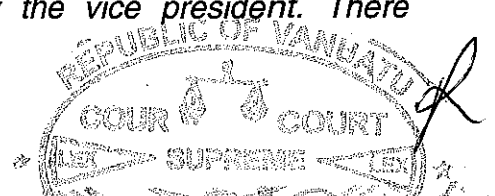


11. Difficulties arose almost immediately after the Tongoa Congress was opened resulting in Nipake Edward Natapei and others (particularly the Claimants) leaving Lumbukuti and purporting to continue the session of the Congress at the Village in Panita also of Tongoa. That group can conveniently be described as the Natapei faction. Those remaining at Lumbukuti can conveniently be described as the Iauko faction. The Iauko faction purported to continue with the session of Congress at Lumbukuti. Elections were held which resulted in Harry Iauko being "elected" as President of VP and number of the second appellants being "elected" to positions within the Executive Council.
12. On 3<sup>rd</sup> April 2010, the claimants obtained Ex Parte orders restraining the first defendant, Harry Iauko, and his supporters, Mr Willie Reuben Abel and Mrs Merelyn Abel from stopping registration of sub committees at the Lumbukuti VP Congress and from going ahead and so as to allow the VP Executive Council to give effect to orders 3 of orders made by the Court on 3<sup>rd</sup> April 2010 in CC 42 of 2010.
13. On 3<sup>rd</sup> April 2010, the claimants assessed the situation and took the decision to move the VP Congress to Panita at the invitation of the Chief of Panita. The claimants continued and held the VP Congress on 3-5 April 2010. At the Panita Congress, the claimants made various resolutions; some of such resolutions of Panita Congress were suspensions and Expulsions of the first and second defendants from Vanuaaku Party.
14. On 6 July 2012, the following preliminary issue had been identified and determined by the Supreme Court:

*"If the term of the Executive Council hereafter referred to as "EC" expires, does the EC continue to have a mandate."* The Court determined that:

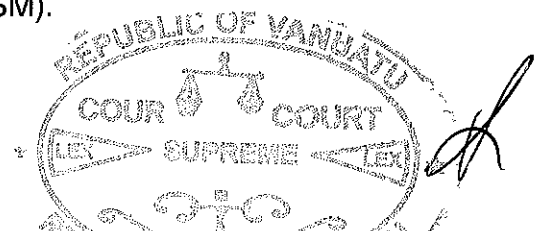
*"The members of the Executive Council elected at Ifira Congress on 30 August 2007 continued to perform their duties and functions until the Congress elects new council".*

15. The Defendants appealed against this determination and on 14 September 2012, the Court of Appeal in CAC No.22 of 2012 upheld the Supreme's Court decision. The Court of Appeal further stated that:
  34. *"The real issue between the parties is whether those elected to the Executive Council at Ifira congress have been legitimately replaced following subsequent elections held on Tongoa in April 2010 or whether they still hold office. This is not an issue that can be resolved on the material before us and it is unlikely to have been capable of resolution in the Supreme Court without a full hearing of the substantive case.*
  35. *We note, however, that it is contended by the appellants that Congress continued at Lumbukuti in 2010 after the Natapei faction removed themselves to Panita village and that various appellants were then voted into office as members of the Executive Council. We trust that it will be of some assistance to the parties if we simply observe that any elections held at Lumbukuti, after the Natapei faction removed itself, can have no validity at all. While the Constitution provides for the Congress to be chaired by the vice President (which occurred), it also provides for Congress to be opened by the vice president. There*



*appeared to be no doubt that the Vice President, Joe Natuman left Lumbukuti for Panita with the Natapei faction. Whatever then happened at Lumbukuti was not an act of the VP congress.*

36. *The Constitution also provides that a Congress is properly constituted when a quorum of its members is present at its opening. There is no evidence to suggest that a quorum was or was not present when the President opens the Congress at Lumbukuti. Indeed, we understand that the departure of the Natapei faction occurred following disagreement during the registration of delegates.*
  37. *Equally, however, there is no evidence that would support a conclusion that a properly constituted Congress was conducted or continued at Panita.*
  38. *Accordingly, any elections held by those remaining at Lumbukuti could not displace those elected at Ifira in 2007. We cannot be certain, however, whether any elections held in Panita could be valid. The uncontested evidence, on which we have based these observations, does not assist us in that particular respect. We had no such difficulty with our evaluation of the legitimacy of the Lumbukuti "elections".*
16. On the basis of the Court of Appeal judgment of 14 September 2012, the Court then deals with the balance of issues remaining in the substantive claim in CC 64 of 2010. The following three (3) issues have been identified by both Counsel and the Court:
1. Registration of subcommittees and delegations of subcommittees and stopping of those registrations by the first and second defendants on 2 April 2010 at Lumbukuti village, Tongoa.
  2. Whether the members of the Executive Council of the Vanuaaku Party are empowered under the VP Constitution to move the VP Congress to a different venue taken the circumstance of the case.
  3. Whether there was a quorum present at the meeting held by the first and second Claimants on 3, 4 and 5 April 2010, taken the circumstance of the present case.
17. The claimants have the onus to prove their claim against the First and Second Defendants on the balance of probability.
18. A five days trial was conducted by the Court to deal with the above issues. Evidence in chief is obtained by sworn statements. Deponents of statements are called in the witness box and are cross examined by the other side. The claimants called the following 18 witnesses and rely on their statements:
- (1) Joe Natuman, Vice President of VP. He filed 7 sworn statements. Exhibited C1 (JN), C2 (JN), C3 (JN), C4 (JN), C5 (JN), C6 (JN) and C7 (JN).
  - (2) Sela Molisa, Secretary General of VP. Sela Molisa filed 4 sworn statements. Exhibited C8(SM), C9(SM), C10(SM) and C11 (SM).



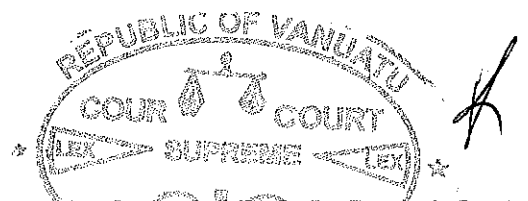
- (3) Nipake Edward Natapei, President of VP. He filed 2 sworn statements. Exhibited C12 (NEN) and C13 (NEN).
- (4) Andrew Kausiama. He was appointed by the Secretary General of VP Executive Council as the Team Leader for registration of subcommittees and delegates of subcommittees for the 37<sup>th</sup> congress on Tongoa in April 2010. He filed one (1) sworn statement. Exhibited C14 (AK).
- (5) Tekol Mastei, a VMF sergeant providing security to Mr Nipake Edward Natapei, on April 2010 during the VP Congress at that time Prime minister of Vanuatu. Witness Tekol Mastei filed one 1 sworn statement. Exhibited C15(TM).
- (6) Iolu Tong filed 1 sworn statement. Exhibited C16 (IT). He was not cross-examined on his sworn statement.
- (7) Willie Nakat, a member of the Registration team appointed by the VP Executive Council, filed 1 sworn statement. Exhibited C17 (WN). He was not cross-examined on his statement.
- (8) Philip Boedoro filed a sworn statement. Exhibited C18 (PB).
- (9) Augustine Garae filed a sworn statement. Exhibited C19 (A.G).

19. The Defendants called the following witnesses and rely on their sworn statements:-

- (1) Harry Iauko Iaris is the first defendant witness. Iauko filed 5 sworn statements. He relied only on 3 sworn statements. Exhibited D1 (HI), D2 (HI) and D3 (HI).
- (2) Alick Hopman filed a sworn statement. Exhibited D4 (AH).

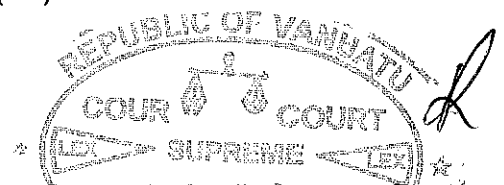
20. Upon reading, considering and assessing the statements of the claimants and the statements of the defendants and upon considering and assessing the oral testimonies of the witnesses and the combination of each of the statements, the Court makes the following findings in respect to the remaining 3 issues before the Court:

- The VP Congress was opened by Mr Nipake Edward Natapei as VP President on 1 April 2010 at Lumbukuti, Tongoa.
- The Executive Council appointed a Registration Team to register the subcommittees and delegates to the 37<sup>th</sup> VP Congress: Andrew Kausiama, Willie Nakat and Thierry Wilson are the appointed members by the VP Executive Secretary.
- The Registration Team started registration on 2 April 2010. There were problems occurring. The Registration Team started again in the afternoon of 2 April 2010. There were heated arguments. There was evidence of interference by a Police officer Pakoa Tarinas. There were involvements of the Lumbukuti



Chief and Mr Willie Reuben Abel about the Executive Council not appointing Mrs Mereylne Arahampat Abel in the Registration Team.

- When the Registration Team started again in the afternoon after they finished the registration of Tafea Outer Islands delegates, the Team then began with Shefa delegates. Mr Andrew Kausiama said Mr Harry Iauko shouted and called his supporters to stop the registration. Mr Harry Iauko ran towards Andrew Kausiama when he was standing with the microphone. Mr Sela Molisa saw Harry Iauko jumped and hit the iron roof of the venue of VP meeting at Lumbukuti village.
  - Other sworn statements and evidence support the evidence that there were threats of violence by the first defendant and his supporters. Mr Silas Hakwa accepted in his submissions that there were threats of violence.
  - It is a finding that the registrations were made by the Executive Council as part of their duties and functions to organise the VP Congress. My answer to issue 1 is as follows:
21. The Court is satisfied on balance of probabilities that the first and second defendants interfered with the registration of the delegates of the 37<sup>th</sup> VP Congress opening at Lumbukuti on 2 April 2010 causing the VP Executive Council to move the 37<sup>th</sup> Congress from Lumbukuti to Panita village. There were overwhelming evidence in support of the court's finding to the issue 1.
22. As to issue 2, it is not a factual issue. It is a legal one. The Executive Council can move the VP Congress from Lumbukuti to Panita as justified by the circumstances of what occurred at Lumbukuti on 3 April 2010 after the assessment and reports of the security of the people attending the Congress (see Tekol Mastei statement (C15<sup>TM</sup>)).
23. It is the purpose of Executive Council to ensure that Congress's purpose and decisions are put into effect faithfully (Article 3D (viii) of VP Constitution). What the Executive Council has tried to do since 1 April 2010 is to carry out a proper VP Congress at Lumbukuti on Tongoa Island. Since it is not safe to hold a meeting of Congress at Lumbukuti, the Executive Council decided to move the VP meeting of the Congress to Panita based on the resolutions the Executive Council made on 2 April 2010. The power of the Executive Council is to fix the date and venue of the Congress. This was recognised in *Mataskelekele v. Abil No.1 [1991] VUSC 2 and on appeal in Mataskelekele v Abil No.2 [1991] VUCA 1 (at p.5)*.
24. Mr Hakwa agrees on the legal principles as stated in the Abbil case of 1991. However, he submits the facts are different from the present case and so the court should not follow the decision of 1991 referred to above. The court rejects Mr Hakwa's submissions on this point.
25. The Court accepts Mr Nayal's submissions that the Judgment of the Court of Appeal in *Mataskelekele –v- Abill [1991]* is the case authority for the proposition that the Executive Council can move the VP Congress from Lumbukuti to Panita on 3 April 2010 as the Executive Council did.
26. As to the issue 3 on quorum, Article 3 (A) (xii) (xiii) and (xiv) of VP Constitution are



the relevant provisions for considerations. They are set out below and emphasized for ease of reference:

### **"3. RULING BODIES**

#### **A) CONGRESS ESTABLISHMENT**

The Party shall have a "Congress" which shall meet at least once a year

- (i) The Congress shall be made up of the following people
  - (1) Sub-committee delegates and
  - (2) Island delegates if there are no sub-committees on those particular islands; and
  - (3) Delegates representing a group of islands if there are no sub-committees on those particular groups of islands: -
  - (4) Members of the Commissars' Council: and
  - (5) Members of the Executive Council.
- (ii) Congress delegates shall be chosen as follows:
  - (1) Sub-Committee delegates shall be chosen by the sub-committees and he or she must be a sub-committee officer:
  - (2) An island delegate where there *is* no sub-committee, shall be chosen by the Party supporters on that island; and
  - (3) A delegate representing a group of islands where there is no sub-Committee shall be chosen by the Party supporters on those islands.
- (iii) A delegate chosen to represent a sub-committee, an island or group of islands can be accompanied to and in the congress by a small number of advisors.
- (iv) There is no limit to the number of Party Congresses a delegate can attend.

#### **PURPOSE**

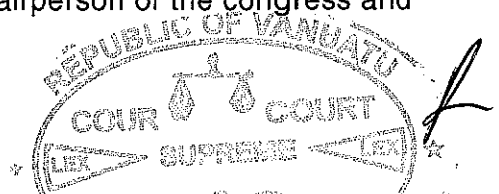
- (v) The purpose of the congress is to ensure the good administration of Party affairs and to work for the welfare of Party members, the community and the nation as a whole view of the aims of the Party.

#### **AUTRORITY**

- (vi) The congress is the supreme decision making body of the Party
- (vii) A decision of Congress can be modified, changed, suspended or cancelled only by another decision of Congress.
- (viii) Congress is the only body competent to change the constitution of the Party.

#### **PROCEEDINGS**

- (ix) The President of the Party shall be the President of the Congress.
- (x) Every Congress shall be opened by the President of the Party. The President may delegate this power to a senior officer of the Party where he is unable to be present.
- (xi) The Vice President of the Party shall be the Chairperson of the congress and





in that capacity shall be responsible for the good conduct and running of the Congress. The Chairperson may delegate this work.

### **QUORUM**

- (xii) A congress cannot proceed as a properly Constituted Congress unless a quorum of its members are present at the opening of the congress.
- (xiii) The quorum for a Congress to open is the presence of:
- (1) The Party President in person: or
  - (2) The Vice-president in person: and
  - (3) Half plus one of the total possible voting delegates that may attend the congress: and at
  - (4) At least half of the members of the Executive Council and
  - (5) The voting, delegate of the Executive Council and the voting delegate of the Commissars' Council must be part of the 'half plus one' of all delegates mentioned in section (a) (xiv) (3)
- (xiv) For the purposes of point (xiv) (3) under this sub-heading ("Quorum") the Executive Council and the Commissars Council shall separately choose one representative each who shall be their respective "voting delegate. (Added Emphasis).

### **VOTING**

- (xv) Every Sub-Committee of the Party is entitled to one vote at congress. A sub-committee is a sub-committee as described in this Constitution:
- (xvi) Every delegate representing islands which have no subcommittees is entitled to one vote at Congress.
- (xvii) Every delegate representing a group of islands, which have no Sub-Committees, is entitled to one vote at Congress.
- (xviii) The Commissars' Council as a body is entitled to one vote at congress. For this purpose the Executive Council shall choose a voting delegate who will exercise that vote.
- (xix) The Executive Council as a body is entitled to one vote at congress. For this purpose the Executive Council shall choose a voting delegate who will exercise that vote. (Added Emphasis).
27. Mr Hakwa concedes on behalf of the First and Second Defendants that the requirements of Article 3(A) (xiii) (1), (2), (4) and (5) are met at the meeting held at Panita.
28. Mr Hakwa, however, argues and submits that the requirements of Article 3 (A) (xiii) (3) and the second limb of Article 3(A) (xiii) (5) of the voting delegates of the Commissars Council are not met.
29. On the evidence, the Court finds and accepts the evidence of Mr Nipake Edward Natapei that Willie Kalorisu was chosen by the Commissars Council as the voting delegate of the Commissars Council in that meeting at Panita.
30. The only remaining part to be proved is the requirements of Article 3 (A) xiii (3) that "half plus one of the total possible voting delegates that may attend the congress".

30. The evidence is that at Panita, there were 192 existing sub-committees and delegates attended the Congress before the Congress started to proceed with its business on 3 April 2010. Out of 192, 190 were sub-committees registered with 1 representation delegate of the Commissars Council (see Evidence of Sela Molisa, secretary General of VP (C8 (SM)) Exhibited SM10.
31. Witness Alick Hopman stated that at Lumbukuti there were 287 subcommittees and delegates. The 287 sub-committees were provided by Mrs Merelyn Arhambat as the National Coordinator at Lumbukuti. The figure of 287 was provided by Mrs Merelyn from the proceeding of VP 36<sup>th</sup> Congress at Ifira. The Court finds that the proceedings of 36<sup>th</sup> VP Congress at Ifira are not relevant for the purpose of considering the validity of the 37<sup>th</sup> VP Congress proceedings and resolutions at Panita.
32. Mrs Merelyn Arhambat filed 2 sworn statements on 11 March 2011 in support of the Defence. On 11 April 2011, she filed a statement of admission of the case of the claimants, there is no credibility on Mrs Merelyn's statements and as such Mr Alick Hopman could not rely on 287 suggested by Mrs Merelyn Arnhambath Abel on behalf of the defendants.
33. The Court rejects the figure of 287 as not The Courts accepts the figure of 192 as meeting the requirements of Article 3 (A) (xiii) (1) (2) (3) (4) and (5) and (xiv) of the VP Constitution.
34. On the evidence the Court finds that the first and second defendants were notified by the Executive Council to attend the Panita Congress. The first and second defendants decided not to attend Panita Congress as they have already had their meeting at Lumbukuti on 2 April 2010 (statements of Sela Molisa and Natuman).
35. The Court finds that notifications were given to the first and second defendants and some of the defendants who were subject to disciplinary decisions of the VP disciplinary Board. (See statements of Joe Natuman).
36. The Court finds that the first and second defendants refused to attend Panita congress. The Court finds and accepts that the Panita Congress validly and lawfully conducted its business and resolutions from 3, 4 and 5 April 2010.
37. Bases of these findings, the Court issues the orders and declarations sought by the claimants in (1) (2) (3) (4) (5) (6) (7) and (10). The Court refuses to grant order 8 for changes as it was abandoned by the claimants.
38. The first and second claimants are entitled to their costs against the First and Second Defendants on standard basis and such costs shall be agreed or determined.

**Dated at Port-Vila this 10<sup>th</sup> day of August 2015**

**BY THE COURT**

**Vincent LUNABEK**  
**Chief Justice**

