

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

Constitutional Case No. 02 of 2015

BETWEEN: HON. EDWARD NIPAKE NATAPEI (MP)  
HON. HAM LINI VANUAROROA (MP)  
HON. RALPH REGENVANU (MP)  
HON. JOHN LUM (MP)  
HON. CHARLOT SALWAI (MP)  
HON. GEORGE ANDRE WELLS (MP)  
HON. KALVAU MOLI (MP)  
HON. NATO TAIWIA (MP)  
HON. PETER VUTA (MP)  
HON. RICHARD NAMEL (MP)

Applicants

AND: SPEAKER OF PARLIAMENT  
HON. MARCELINO PIPITE (MP)

First Respondent

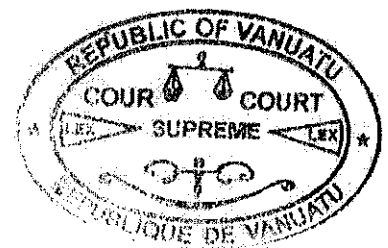
AND: THE REPUBLIC OF VANUATU  
Second Respondent

Coram: Judge Aru

Counsel: Mr. R. Warsal for the Applicants  
Mr. R. T. Kapāpa for First Respondent  
Mrs. F. Williams for the Second Respondent

Date of Hearing: 22 June 2015

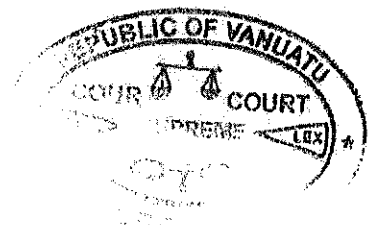
Date of Judgment: 24 June 2015



## JUDGMENT

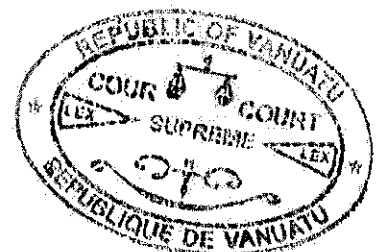
### Introduction

1. The Applicants are members of Parliament who now apply by way of a constitutional application pursuant to Article 53 of the constitution. Their Amended Urgent Constitutional Application was filed on the 18 June 2015. Also filed in support of the application is a sworn statement deposed by Ham Lini Vanuaroroa, two sworn statements by Edward N Natapei an undertaking as to damages and a sworn statement of urgency.
  
2. In essence, the Applicants seek three main relief which are as follows:-
  - a) a declaration that the Honourable Speaker's closing of the first ordinary session of Parliament on 16 June 2015 is in breach of the constitutional rights of the Applicants as enshrined in Article 43 (2);
  
  - b) an order that the honourable Speaker reconvene the First Ordinary Session of Parliament to consider the motion to be moved by the Honourable Edward N Natapei and seconded by the honourable Ham Lini Vanuaroroa being a motion of no confidence against the Prime Minister, the Hounourable Sato Kilman Meltek Livtunvanu; and
  
  - c) costs.
  
3. At the first conference, I enquired into matters raised by the constitutional application and after hearing counsels, was satisfied that it needed to be dealt with on an urgent basis as it raises important constitutional issues, it involves the law making process of Parliament and is matter of public interest. Time was therefore abridged and directions were issued for the respondents to file and serve their responses. Parties were also



directed to file written submissions before the hearing which was listed for 200 pm on Monday 21 June 2015.

4. The first respondent in response filed a response with their submissions and a counter application supported by a sworn statement of Honourable Marcellino Pipite as the first respondent. The second respondent also filed a response with written submissions.
5. Two main grounds are advanced by the Applicants in support of their application as follows:-
  - (1) that the office of the Speaker of parliament had received a motion on 12 June 2015 being a motion of no confidence against the Prime Minister and on 12 June 2015 ruled that it was valid and to be debated on 18 June 2015;
  - (2) that once the motion of no confidence had been received by the Speaker when Parliament was in session and the motion was in accord with Article 43 (2) of the Constitution, the Speaker was not competent to close Parliament on 16 June 2015 and rule that there was no other business to deal with as it denied the applicants their constitutional rights.
6. The second respondents position is that they take a neutral role to assist the Court and will abide orders of the Court except as to costs. Their response as to ground 1 is that the court is required to rule whether a motion not in compliance with Article 43 (2) can be deemed to be in order and if not whether it is sufficient for the speaker to dispose of it on the floor of Parliament or whether it is a matter for Parliament to so dispose it.

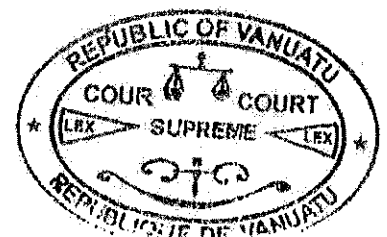


7. As to ground 2 it says that the court is invited to rule that if there was outstanding business, what exactly was the outstanding business.
8. The first respondent says that the Applicants are not entitled to the relief sought as their constitutional rights were not infringed under Article 43 (2) as the declaration of the Speaker failed to comply with the one weeks' notice requirement and only allowed 6 days. Secondly as the recess period was to start on 20 June to 20 July as provided by Standing Order 12 (6) of the Standing Orders of Parliament, the Speaker should not have accepted the motion as to set it down for debate Parliament would violate its own internal rules and procedures.
9. The first respondent's counter application was not filed initially as an original proceeding but as a response to the Applicants constitutional application and advances the same grounds as the response. It was agreed by counsel for the First Respondent that it will be dealt with as such. It seeks declarations that the Speaker's decision to allow the motion for debate on 18 June 2015 is invalid and breaches Article 43(2) and that the motion of no confidence did not meet the required 7 days' notice.

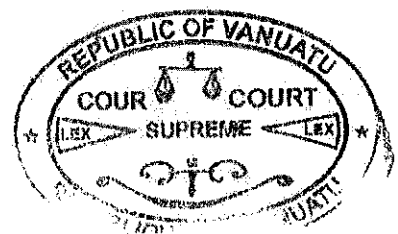
#### Background

10. The essential facts of this case are not disputed and I set them out below:-

- (1) On 22 May 2015 the Speaker of Parliament summoned Parliament to meet in its first Ordinary Session commencing Monday 8 June 2015 at 8.30am;
- (2) On 11 June 2015 Parliament passed a motion of no confidence against the Honourable Joe Natuman as Prime Minister and elected the Honourable Sato Kilman as the new Prime Minister;



- (3) On 12 June 2015 at around 1.30pm a motion of no confidence in the Prime Minister, Honourable Sato Kilman signed by ten members of Parliament, the Applicants, was deposited with the Speaker of Parliament;
- (4) On the same day 12 June 2015 the Speaker of Parliament by letter acknowledged that the motion was legally in order and stated that the motion was due to mature for debate within seven (7) days time on Thursday 18 June 2015 for debate at 4.00pm;
- (5) On 16 June 2015 when Parliament met for business it dealt with several motions:-
- i) Motion to remove Speaker Honourable Philip Boedoro who was replaced with the first respondent Honourable Marcellino Pipite;
  - ii) Motions to remove and appoint the First, Second, Third and Fourth Deputy Speakers of Parliament;
  - iii) Motions to suspend Honourable Joe Natuman , Honourable Philip Boedoro and Honourable Ham Lini Vanuaroroa from Parliament.
- (6) During its business for the motion to remove Honourable Philip Boedoro as Speaker , Parliament passed the motion and elected Honourable Marcellino Pipite as the new Speaker followed by the election the First, Second, Third and Fourth Deputy Speakers;
- (7) Subsequently following on after the removal and election of the deputy speakers, the Speaker announced that the motion of no confidence against Prime Minister Sato Kilman Livtuvanu was not in order and as



such there was no other business for Parliament to discuss and he closed the First Ordinary Session of Parliament.

#### Issues

11. The main issue which arises is whether the actions of the Speaker in closing the First Ordinary Session on 16 June 2015 infringed upon the rights of the applicants. The parties identified the following three questions to address in providing an answer to the main issue:-

- 1) Was Parliament still seized of business when the First Ordinary Session of 2015 was closed by the Speaker at approximately 5.30 pm on Tuesday 16 June 2015;
- 2) Was the closure of the First Ordinary Session on 16 June 2015 lawful; and
- 3) Was there an infringement of the constitutional rights consequent on the closure of Parliament.

#### Law

12. The legal framework under which consideration is given is set out as follows:-

##### Constitution

13. Article 2 states:-

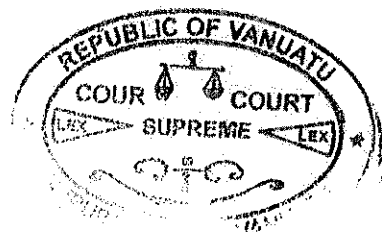
*"2. Constitution supreme law*

*The Constitution is the supreme law of the Republic of Vanuatu."*

14. Article 16 (1) and (2) states:-

*"16. Power to make laws*

*(1) Parliament may make laws for the peace, order and good government of Vanuatu.*



(2) *Parliament shall make laws by passing bills introduced either by one or more members or by the Prime Minister or a Minister.*

.....”

15. Article 21 states:-

**“21. Procedure of Parliament**

(1) *Parliament shall meet twice a year in ordinary session.*

(2) *Parliament may meet in extraordinary session at the request of the majority of its members, the Speaker or the Prime Minister.*

(3) *Unless otherwise provided in the Constitution, Parliament shall make its decisions by public vote by a simple majority of the members voting.*

(4) *Unless otherwise provided in the Constitution, the quorum shall be two-thirds of the members of Parliament. If there is no such quorum at the first sitting in any session Parliament shall meet 3 days later, and a simple majority of members shall then constitute a quorum.*

(5) *Parliament shall make its own rules of procedure.”*

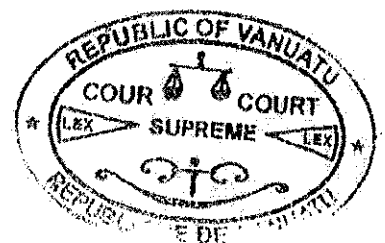
16. Article 22 (1) and (2) states:-

**“22. Speaker and Deputy Speakers**

(1) *At its first sitting after any general election Parliament shall elect a Speaker and one or more Deputy Speakers.*

(2) *The Speaker shall preside at sittings of Parliament and shall be responsible for maintaining order.*

.....”



17. Article 40 (1) states:-

**"40. Council of Ministers**

(1) *There shall be a Council of Ministers which shall consist of the Prime Minister and other Ministers.*

....."

18. Article 43 states:-

**"43. Collective responsibility of Ministers and votes of no confidence**

(1) *The Council of Ministers shall be collectively responsible to Parliament.*

(2) *Parliament may pass a motion of no confidence in the Prime Minister. At least 1 weeks' notice of such a motion shall be given to the Speaker and the motion must be signed by one-sixth of the members of Parliament. If it is supported by an absolute majority of the members of Parliament, the Prime Minister and other Ministers shall cease to hold office forthwith but shall continue to exercise their functions until a new Prime Minister is elected."*

19. Article 49 (1) states:-

**"49. The Supreme Court, the Chief Justice and other judges**

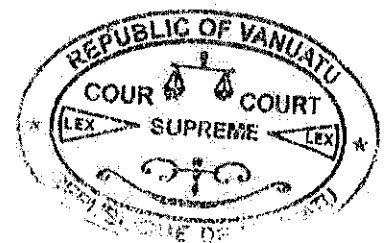
(1) *The Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings, and such other jurisdiction and powers as may be conferred on it by the Constitution or by law.*

....."

20. Article 53 (1) and (2) states:-

**"53. Application to Supreme Court regarding infringements of Constitution**

(1) *Anyone who considers that a provision of the Constitution has been infringed in relation to him may, without prejudice to any other legal remedy available to him, apply to the Supreme Court for redress.*





(2) *The Supreme Court has jurisdiction to determine the matter and to make such order as it considers appropriate to enforce the provisions of the Constitution.*

....."

### Standing Orders of Parliament

21. Standing Order 12 states:-

#### *"Ordinary Sessions*

*12. (1) Parliament shall meet in two ordinary sessions during one calendar year. Each session shall be divided into one or more meetings as the case may be.*

*(2) The first ordinary session of Parliament shall commence in the middle of the month of March on a date determined by the Speaker, after consultation with Prime Minister.*

*(3) The second ordinary session of Parliament shall commence in the middle of the month of August on a date determined by the Speaker, after consultation with the Prime Minister.*

*(4) The Clerk shall send to each Member a notice stating that the ordinary session will commence on the date specified therein. The notice shall contain a list of Bills to be considered during the session. The notice shall be given at least fifteen (15) days before the date appointed for the opening of the session.*

*(5) When at the end of any meeting, an ordinary session is adjourned to be continued during another meeting, the Speaker shall inform the Members of the date on which the next meeting shall commence.*

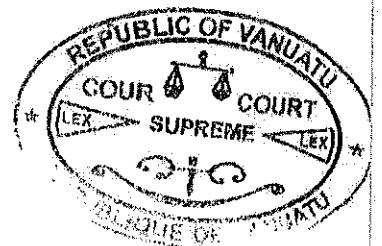
*(6) Under normal circumstances neither Parliament nor any of its committees shall meet in the periods of December 20th to January 20th or June 20th to July 20th."*

22. Standing Order 23 states:-

#### *"Order of Business during a week*

*23. When the sitting day business has been transacted in accordance with Standing Order 17*

*(2), Parliament shall proceed with its business, day by day, in the following order:-*



*Monday*

*Morning*

*Private Bills*

*Government Bills*

*Afternoon*

*14.00 to 16.00 - Government Bills*

*16.00 to 17.00 - Oral questions*

*Tuesday*

*Morning:*

*Government Bills*

*Afternoon:*

*14.00 to 16.00 - Government Bills*

*16.00 to 17.00 - Written motions*

*Wednesday*

*Afternoon:*

*14.00 to 16.00 - Government Bills*

*16.00 to 17.00 - Written questions*

*Thursday*

*Morning:*

*Private Bills*

*Government Bills*

*afternoon:*

*14.00 to 16.00 - Government Bills*

*16.00 to 17.00 - Written motions*

*Friday*

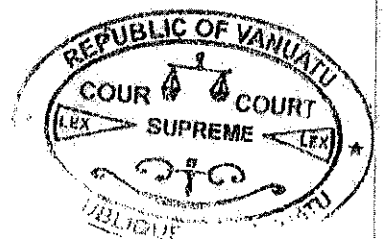
*Morning:*

*Private Bills.*

*afternoon:*

*14.00 to 15.00 - Government Bills.*

*15.00 to 16.00 -Statement by Members*



16.00 to 17.00 - General debate."

23. Standing Order 45 states:-

*"Decision of the Speaker*

45. *The opinion or a decision of the Speaker as to any question related to the application or interpretation of these Standing Orders shall not be challenged except on a written motion made in accordance with Standing Order 35."*

24. Standing Order 46 states:-

*"Motion to Suspend Standing Orders*

46. (1) *Whenever the Speaker is satisfied that there is a case of urgent necessity for the proper conduct of the business of Parliament, any Order may be suspended on oral motion without notice. If such motion be agreed to, these Standing Orders shall be suspended so far as is necessary to carry out the object for which the motion was made.*

(2) *A motion to suspend Standing Orders shall require to be seconded and shall not take effect unless it has been supported by the votes of not less than two-thirds of the Members present.*

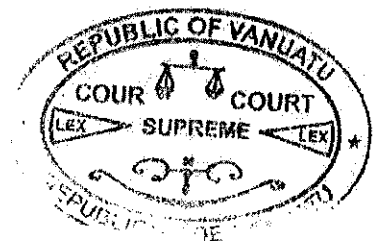
(3) *When the conduct of the business of Parliament requires, the Speaker may, with the unanimous consent of the Members present, suspend any specified Standing Order."*

25. I have also considered the following cases which were referred to me by Counsels:-

- *Attorney General v Jimmy [1999] VUCA 1*
- *In re the Constitution, President of the Republic v Korman [1998] VUCA 3*
- *Republic of Vanuatu v Carcasses [2009] VUCA 9*
- *Natapei v Tari No 1 [2001] VUSC 29*

Discussion

26. The Applicants have come to court to seek redress as they consider that a provision of the constitution has been infringed in relation to them as provided under Article 53 (1). Where a case is made out, the Supreme Court has jurisdiction under Article 53 (2) to determine the



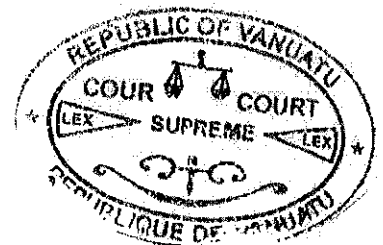
matter and to make orders it considers appropriate. The Court of Appeal in *Attorney General v Jimmy* accepted that the "courts have a duty to interfere if the constitutionally required process of law making is not properly carried out." It went further to state that:-

*"We do not believe that the technicalities of the Common Law, and the limitations upon the English Courts' power to direct the King which for good and sufficient historical reasons these Courts recognise, have any relevance to the proper interpretation of the Constitution of Vanuatu. The power expressly given to the Court by Articles 6 and 53 to enforce the provisions of the Constitution makes reference to other approaches unhelpful. It would be wrong in principle to limit the plain terms of those articles by reference to the ancient history of a very different society, and on that account to stultify the intention of the Constitution that the Court should play a significant role in supporting the rights created by the Constitution."*

27. The gist of the Applicants submissions is that as members of Parliament, Article 43 (2) allows them to pass a motion of no confidence in the Prime Minister. It states:-

*"Parliament may pass a motion of no confidence in the Prime Minister. At least 1 week's notice of such a motion shall be given to the Speaker and the motion must be signed by one-sixth of the members of Parliament. If it is supported by an absolute majority of the members of Parliament, the Prime Minister and other Ministers shall cease to hold office forthwith but shall continue to exercise their functions until a new Prime Minister is elected."*

28. The Applicants submit that when they deposited their motion of no confidence with the Speaker and when the Speaker declared that it was valid and set it down for debate, the Speaker was then no longer competent to declare it invalid or to close Parliament without allowing debate on the motion. They submit that it was then a matter for Parliament but not the Speaker. It is not disputed that the motion of no confidence signed by the Applicants, ten members of Parliament, was deposited with the Speaker on 12 June 2015 at around 1.30 pm. On the same day the Speaker advised by letter to the mover and seconder of the



motion, Honourable Edward Nipake Natapei and Honourable Ham Lini Vanuaroroa that it was valid and set it down for debate on Thursday 18 June 2015 at 4.00 pm. The exact terms of the Speaker's letter are reproduced below:-

*"Friday, June 12 2015*

*Hon Edward Nipake Natapei (MP)*

*Member of Port Vila*

*Hon Ham Lini (MP)*

*Member for Pentecost*

*C/ Office of Leader of the Opposition*

*Parliament House*

*Port Vila*

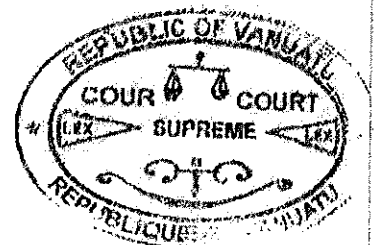
*Dear Hon Colleague Members*

*RE: STATUS OF THE MOTION OF NO CONFIDENCE AGAINST THE PRIME MINISTER,  
THE HON SATO KILMAN LIVTUNVANU*

*I acknowledge receipt of the motion of no confidence against the Prime Minister of the Republic of Vanuatu, the Honourable Sato Kilman Livtunvanu which you deposited was duly registered with the office of the Speaker at 1.30pm today, Friday June 12 2015.*

*The motion was lodged in accordance with Articles 43 (2) and 41 of the Constitution of the Republic of Vanuatu, and Standing Orders 8 and 9 (3) of the Standing Orders of Parliament. These provide for the voting out of the incumbent Prime Minister, the Honourable Sato Kilman Livtunvanu, by way of a motion of no confidence and the election of a replacement PM.*

*I am pleased to advise and declare to you Honourable members that the motion is constitutionally and legally in order to be debated in Parliament. Since its receipt and registration as of today, the motion is due to mature for debate within seven (7) days time which falls on Thursday 18 June and set for debate at 400 pm.*



(emphasis added)

Yours sincerely

(Signed)

Hon Phillip Boedoro

Speaker. "

29. It was further submitted by the Applicants that Parliament was still in session when the motion of no confidence was deposited with the speaker on 12 June 2015. This is also not disputed as when Parliament met again on 16 June 2015, it still had business before it. A motion to remove and replace the Speaker, motions to remove and appoint the First and Second, Third and Fourth Deputy Speakers and a motion to suspend the Honourable Joe Natuman, Honourable Phillip Boedoro and Honourable Ham Lini Vanaroroa from Parliament.

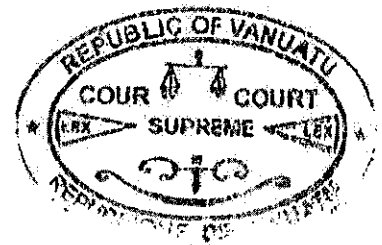
30. Case authorities referred to earlier support the Applicants position: First, In *In re the Constitution , President of the Republic v Korman* at page 4 the Court of Appeal stated that:-

*"Once a Motion has been accepted and a date has been set down for its hearing the Speaker is not competent to close Parliament on the basis that there is no business to deal with because that in effect is denying members of Parliament a Constitutional right."*

31. Secondly, In *Republic of Vanuatu v Carcasses* at page 8 the Court of Appeal stated that:-

*"If a motion of no confidence is received by the Speaker which complies with Article 43 (2) while Parliament is in session then the session must continue until such time as that motion can be considered and determined."*

32. The First Respondent on the other hand argues that first, Article 43 (2) requires that apart from the requirement that the motion must be signed by one sixth of the members of Parliament, the second criteria is that at least one weeks' notice must be given. It was argued that the Speaker by allocating the motion for debate at 4.00 pm on 18 June 2014 did



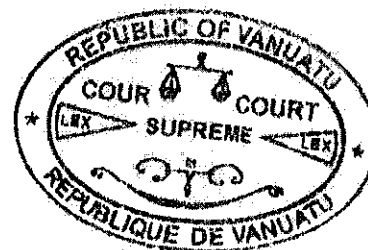
not comply with the one week notice requirement. I am not persuaded by this argument as it runs contrary to what the Court of Appeal has said in In re constitution President v. Korman above and similarly in Natapel v Tari No 1 [2001] VUSC 29 where the Chief Justice stated that:-

*"Once a motion has been accepted and a date has been set down for its hearing the Speaker is not competent to close Parliament on the basis that there are typing errors or incorrect references of the provisions of the Constitution in the content of the Motion of No Confidence. And by doing so, in effect, is denying members of Parliament a constitutional right."*

33. The First Respondent further submits that the Speaker should not have accepted the motion of no confidence as it was only a few days left in the session before the Parliamentary recess which pursuant to Standing Order 12 (6) is from 20 June to 20 July. The final argument raised by the First Respondent is that the Speakers' decision to accept the motion for debate was ultra vires the Standing Orders of Parliament as it was argued that given the time frame that Parliament had, the Speaker before ruling on the motion should have first requested Parliament to suspend its Standing Orders. Both these arguments are also rejected. In Republic of Vanuatu v Carcasses at page 6 of the judgment the Court of Appeal stated that:-

*"...They (standing Orders of Parliament) are all matter for Parliament alone. It may be the case that under the Standing Orders the respondent could have taken action but that is not for us. Whatever the position it does not affect or alter the fact that the Constitution prescribes a position with regards to motions of no confidence. Nothing can alter or abrogate that position. There was a breach in this case so the response was entitled to relief. This case concerns only the Court ensuring (as it is required to under Article 53 of the Constitution), that the constitutional rights under Article 43 (2) are given meaning and substance."*

(emphasis added)



34. The Constitution being the Supreme law as provided for under Article 2, sets out the mechanism for dealing with motions of no confidence under Article 43(2). In light of what the Court of Appeal has said in the authorities referred to above. Once the motion is accepted by the Speaker that it is valid and set down for debate, Parliament must continue in session until such a motion is disposed off.

35. In conclusion, my answers to the three questions posed are:-

1) Was Parliament still seized of business when the First Ordinary Session of Parliament Closed at 5.10pm on 16 June 2015?

Answer: Yes. A motion of no confidence in compliance with Article 43 (2) was accepted by the Speaker and given a date to be debated by Parliament;

2) Was the closure of the First Ordinary Session on 16 June 2015 lawful?

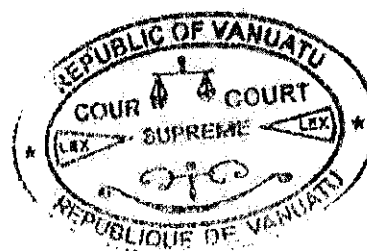
Answer: No. The first ordinary session was closed while a motion of no confidence in compliance with Article 43 (2) was accepted by the Speaker and was to be debated by Parliament at 4.00 pm on the 18 June 2015;

3) Was there an infringement of the constitutional rights consequent on the closure of Parliament?

Answer: Yes. There was an infringement of the constitutional rights of the Applicants under Article 43 (2) to debate the motion of no confidence in the Prime Minister.

36. Having made the above findings, I also take into account what the Court of Appeal said in Republic of Vanuatu v Carcasses that:-

*"Setting the next date for Parliament to meet, as an effective enforcement process of the constitutional breach, is part of the Supreme Court's jurisdiction under art 53(2) of the Constitution."*





37. I therefore make the following orders and declarations sought:-

- 1) Order that the First Respondent's counter application is without basis and is hereby dismissed;
- 2) Declare that the Speaker's closing of the First Ordinary Session of Parliament on 16 June 2015 was in breach of the constitutional rights of the Applicants;
- 3) Order that the Honourable Speaker reconvene the First Ordinary Session of Parliament so as to consider the motion moved by the Honourable Edward Nipake Natapei and seconded by the Honourable Ham Lini Vanuaroroa being a motion of no confidence against the incumbent Prime Minister of the Republic of Vanuatu, the Honourable Sato Kilman Meltek Livtunvanu;
- 4) The reconvening of Parliament in accordance with order 3) above to be at 4.00 pm on Tuesday 30 June 2015;
- 5) The Applicants are entitled to costs to be paid by the First Respondent as agreed or to be taxed.

DATED at Port Vila, this 24 day of June, 2015.

BY THE COURT

D. Aru  
Judge

