

BETWEEN: Richard Walsh Leona
Petitioner

AND: Principal Electoral Officer
1st Respondent

Electoral Commission
2nd Respondent

Ham Lini Vanuaroroa
3rd Respondent

Date of Conference: *16th day of March, 2016 at 8:30 AM*

Before: *Vincent Lunabek – Chief Justice*

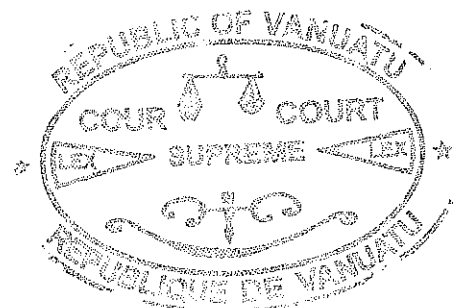
In Attendance: *-Mr Roger Tevi for Petitioner*
-Mr Sakiusa Kalsakau for 1st and 2nd Respondent
-Mr Ham Lini is not present nor legally represented

Reasons for Striking Out the Election Petition

On 4 February 2016, the Petitioner filed an urgent election Petition with a sworn statement in support filed on the same date. The Petition alleged that the Petitioner had a majority of lawful votes and should acquire the fourth seat on Pentecost constituency.

On 17 February 2016, the Petitioner filed an amended election petition alleging that there has been a number of election irregularities that have had a great impact on the success of the Third Respondent in acquiring the fourth seat in the Pentecost Constituency. The Petition alleged unlawful proxy practices against the Third Respondent's supporters. The Petition alleged also issuance of new electoral cards by the supporters of the Third Respondent. It is also alleged against the First and Second Respondents that they intentionally and negligently manipulated cards in the number of valid votes cast between the Petitioner and the Third Respondent in favour of the Third Respondent. The Petition claims for a declaratory order to the effect that the elections of 22 January of the Petitioner and the Third Respondent in Pentecost Constituency be declared by the Court as null and void. The Petitioner also claims for an order pursuant to section 62 for examination of votes cast under the Representation of People Act.

The Amended Petition was listed for First Hearing pursuant to Rules 2.5(3) and 2.6 (1) (2) (3) on 19 February 2016 at 8.30am.



On 19 February 2016, Counsel for the Petitioner, Mr Roger Tevi informed the Court of the following:

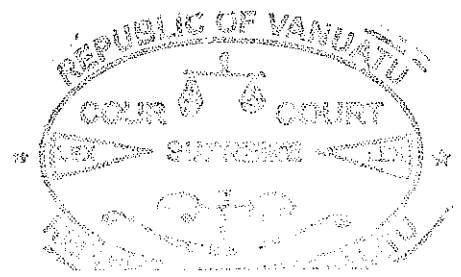
- He wishes to file and serve a further Amended Election Petition on behalf of the Petitioner.
- He says the initial and Amended Election Petitions are based on section 62 of the Act [Cap 146].
- The Petitioner now abandons the grounds of the Petition based on s.62 of the Act.
- The Petitioner will file and serve a further amended Petition. The Petitioner's further amended Petition will allege the irregularities of the elections of the Constituency of Pentecost through the process and conduct of elections by the officials.
- On 19 February 2016, the Court allowed Mr Roger Tevi to file and serve a further amended election Petition on behalf of the Petitioner as requested by him.
- The Court also reminded Mr Tevi that if he wishes to file and serve new grounds of the Petition he must do so within 21 days from the date of the Publication of the results of the Elections of 22 January 2016 in the Gazette pursuant to s.57 of the Act.

The Petitioner filed a further Amended Petition on 10 March 2016. The Petition alleged a number of election irregularities that led to the success of the Third Respondent acquiring the fourth seat in the Pentecost constituency, namely-

- Unlawful preparation of proxy votes for the Third Respondent supporters by two officers of the First Respondent;
- Unlawful creation of electoral cards for proxy purposes as well as for first time voters for the Third Respondent supporters by the two(2) same officers of the First Respondent;
- Creation of electoral cards of underage voters for the Third Respondent supporters by the same two officers of the First Respondent;
- Unlawful proxies of the Third Respondent supporters prepared and cast at various polling stations on the Pentecost Island; and
- Votes cast at two(2) polling stations in South Pentecost intentionally changed in favour of the Third Respondent.

The Further Amended Petition claimed among other matters, for an order to determine the legality of the proxy votes cast in favour of the Third Respondent; the legality of the new electoral cards prepared as alleged by the Petitioner and again a section 62 examination of votes cast which was already abandoned.

The Further Amended Petition was supported by Four (4) sworn statements filed on 10 March 2016 and a further sworn statement of the Petitioner filed on 11 March 2016.



On 16 March 2016, at the First Hearing of the Further Amended Petition, the Court struck it out as it was filed outside the statutory time of 21 days provided under section 57(1) of the Representation of the People Act [Cap 146]. The time limit of 21 days is a statutory mandatory requirement. The time limit of 21 days of the publication in the Gazette of the results of the election to which the petition relates, cannot be extended (see section 57(3) of the Act).

In Jimmy –v- Rarua [1998] VUCA 4; Civil Appeal Case No.02 of 1999 (23 April 1998), the focus of the Court attention was section 57(3) and the Court held as follows:

“Upon plain reading of the words, we are satisfied that ... when there is an election petition there is to be enumerated within the 21 days period (from which there can be no extension) a clear statement of the matters complained of... The petition means whatever the grounds for objecting to the result of an election must be filed within the twenty one days...”

It may be argued that some of the grounds in the Further amended Petition were contained in the Amended Petition filed on 17 February 2016 and therefore within the statutory time limit of 21 days. It may be so. However, it is noted that when the initial Petition was filed on 4 February 2016 and the Amended Petition filed on 17 February 2016, the Petitioner filed a sworn statement on 5 February 2016 in support. The sworn statement of the Petitioner does not set out details of the evidence the petitioner relies on. In his sworn statement filed 5 February 2016, the Petitioner requested a recount of valid votes between himself (petitioner) and the Third Respondent in the Pentecost Constituency pursuant to section 62 of the Act. This ground of the Petition was abandoned by the Petitioner through Counsel as referred to in the early part of this ruling.

For the sake of argument, when the Amended Petition was filed on 17 February 2016, there was no sworn statement filed by the Petitioner setting out details of the evidence the Petitioner relies on (my emphasis) and there was no any other sworn statement filed to support the Petition on 17 February 2016 or within the 21 days period from the publication in the Gazette of the results of the election to which the election relates.

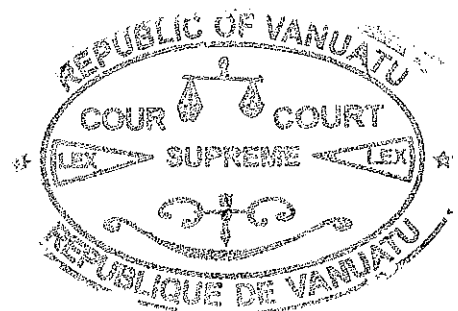
Rules 2.3(2) and 2.5(1) are the relevant part of the Election Petition Rules. They provide as follow:

“What a Petition must contain

- 2.3 (1) ...
- (2) *The petition must have with it:*
- (a) *a sworn statement by the petitioner in support of the Petition, setting out details of the evidence the petitioner relies on; and*
- (b) *any other sworn statements that support the petition...”*

“Filing

- 2.5. (1) *A petition is filed by lodging 4 copies of the Petition and sworn statement with the Court.*
- (2)...”



Again assuming that some grounds of the petition raised in the Amended petition filed on 17 February 2016 ought to survive the statutory time limit of 21 days because they were not substantially affected or changed by the Further Amended Petition filed on 10 March 2016, it is my judgment that the Amended Petition filed 17 February 2016 is lodged contrary to the provisions of Rules 2.3 (2) (a) and (b) and 2.5 (1) of the Election Petition Rules. The Amended Petition was therefore not validly filed on 17 February 2016. It cannot be accepted and relied upon.

It is again noted that the Further Amended Petition filed on 10 March 2016 was filed outside the statutory time limit set under section 57(1) of the Representation of People Act. Even if the sworn statements filed on 10 March and 11 March 2016 provide evidence of the allegations contained in the Further Amended Petition, they cannot cure the breaches of section 57(1) of the Representation of People Act and the Election Petition Rules.

The cases of Jimmy –v- Rarua [1998] VUCA 4; Civil Appeal Case No.2 of 1999 (23 April 1998) and Leinavao Tasso –v- Simon Omawa and ors, Election Petition Case No.1 of 2008 are in support of the striking out of the Petition.

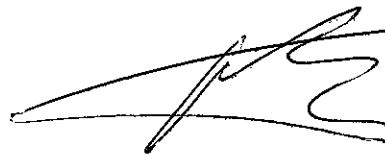
The Court makes the following orders:

ORDERS

1. The Further Amended Petition is struck out as it was filed outside the time limit required under section 57(1) of the Act [Cap 146]. Any other grounds contained in the Amended Petition filed 17 February 2016 are struck out.
2. The First and Second Respondents are entitled to cost against the Petitioner in Vatu 10,000.
3. Such costs of Vatu 10,000 to the First and Second Respondent should be paid out of the amount of VT 20,000 deposit.
4. The balance of Vatu 10,000 out of 20,000VT shall be returned to the Petitioner.

DATED at Port Vila this 16th day of March, 2016

BY THE COURT



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Vincent Lunabek
Chief Justice

