

BETWEEN: Robert Bohn siko
Petitioner

AND: Simeon Seule
First Respondent

Isaac Aliliu Daniel
Second Respondent

The Electoral Commission
Third Respondent

Date of Hearing of Application: *24th day of March, 2016 at 9:00 AM*

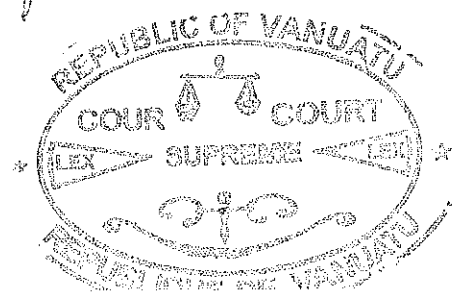
Before: *Vincent Lunabek – Chief Justice*

In Attendance: *Ms Kayleen Tavoia for Petitioner*
Mr Felix Laumae for First Respondent
Mr Avock Godden for Second Respondent

Reasons for Striking Out Petition

The Petitioner filed an election petition on 19 February 2016. The Petition seeks a declaration to the effect that the official declaration of candidature for Seule Simeon (First Respondent) and Isaac Tonogaliliu Daniel (Second Respondent) be declared null and void. The Petition alleged in the Petition the following:

- “1. ... That Seule Simeon and Isaac Tongogaliliu Daniel are not validly elected as they used irregular campaign techniques;
 - (a) The Respondents have breached section 45, Bribery of the Representation of the Peoples Act;
 - (b) The Respondents have breached section 46 of the Representation of the Peoples Act.
2. The use of Tropical Cyclone Pam goods as political propaganda by Seule Simeon.
3. The irregular campaign techniques were used in the following villages prior to the elections in terms of money.



4. Additionally the traditional practice of bribery must be addressed and stopped.”

The Petitioner filed a sworn statement on 19 February 2016 in support of the Petition. He deposes to the effect that he was aware as he was advised after the snap elections of 22 January 2016 that there had been irregular campaign tactics used by other candidates.

He had been advised that Seule Simeon had given money and rice to the electorate on Lamén Island and at other places on Epi. He had been advised that Isaac Tongoliliu had provided breakfast, lunch and dinner for campaign staff and other voting guests for the entire campaign period. Isaac Tongoliliu did apparently provide rice to the electorate during the campaign.

One Isabelle Donald also filed a sworn statement in support of the Petition on 19 February 2016. She deposes of what she was aware of happening on 8 December 2015. One Joel Lemaya (campaign man of Seule Simeon) gave 1000VT and 1 chain oil to one Vevira Apia Peter. On 21 January 2016, Willie Kalo told Ania Peter that Joel Lemaya gave VT1000 to the women and one plastic chain oil. She knew Seule Simeon launched his elections campaign before the declaration of candidature for the snap elections. Seule Simeon was the main man to distribute the Tropical Cyclone Pam Relief given by OXFAM as a propaganda for the elections of 2016. Seule organised bigfala kakai on the morning of the elections of 22 January 2016. Isaac Tongoliliu held his campaign camp at a Nakamal which is a public place where people has access to and can be fed. She also deposes of what other people told her about. Other sworn statements in support of the Petition were filed on 24 February and 8 March 2016.

On 8 March 2016, the Court conducted a First Hearing pursuant to Rules 2.5 (2)(a) and 2.5(3) and 2.6(1). The Court found that the Petition has a foundation and consequential orders and directions are made.

Mr Felix Laumae and Mr Godden Avock informed the Court that they each filed applications to strike out the Petition. Mr Avock filed his application to strike out the Petition on 7 March 2016. Mr Laumae filed his application to strike out the Petition on 8 March 2016. The Petitioner filed responses to the two applications. The two applications are listed for hearing on 24 March 2016 at 9.00am.

The two applications were heard on 24 March 2016 at the same time at 9.00am.

The applications advance similar sort of grounds and arguments. The First and second Respondents (applicants) say in substance that the Petition was not presented pursuant to Rules 2.3(1) (a)(b) of the Election Petitions Rules which says:

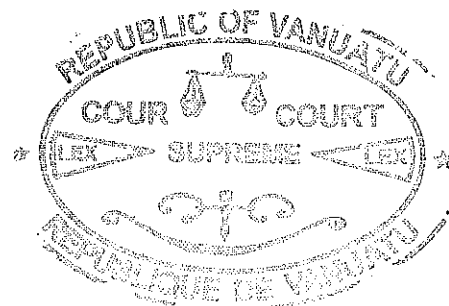
“what a petition must contain

(a) whether the person was required to vote, or claims to have been a candidate, at the election, and

(b) the grounds on which the election is disputed; and

(c) the facts on which the petition is based; and

...”



It is submitted that the Petition failed to set out whether the person (Petitioner) was registered to vote, or claims to have been a candidate at the election. I agree, the Petition failed to do so.

It is also submitted that the petition fails to plea the grounds of his allegations. It is said the Petitioner did not set out the grounds he complained of. I note the Petition alleged breaches of sections 45 of bribery and 46 of treating. I accept that it is a general plea of bribery and treating against the First and Second and Third Respondents. However, there are no particulars of bribery and treating pleaded. The Petition fails to plead the facts upon which the Petition relies. The Petition is a general assertions against the First, Second and Third Respondents without specific particulars against each of them. I agree with the submissions of the First and Second Respondents to this effect.

The Petitioner's Counsel in her responses to the submissions of the two Applicants, conceded that the Petition sets out the law rather than the facts the petition relies on.

The Petition did not comply with Rules 2.3(1) (a) (b) (c) of the Elections Petition Rules. It must be struck out as the defects of the Petition are substantive in nature.

The following case authorities are in support of the applications to strike out the Petition.

-Jimmy –v- Rarua [1998] VUCA 4; Civil Appeal Case 02 of 1999(23 April 1998)

-Leinavao Tasso –v- Ioan Simon Omawa and Electoral Commission [2008], Election Petition Case 01 of 2008.

The sworn statements filed cannot cure the defects of the pleadings in the Petition.

ORDERS

1. The Petition is struck out.
2. The First and Second Respondents are entitled to costs against the Petitioner assessed as follow:
 - VT 180,000 for the First Respondent; and
 - VT 200,000 for the Second Respondent
3. The total costs of VT 380,000 shall be paid to the First and Second Respondents by 7 April 2016.

DATED at Port Vila this 24th day of March, 2016

BY THE COURT

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Vincent Lunabek
Chief Justice

