

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

**Election Petition
Case No. 20/888 SC/EP**

**IN THE MATTER OF: THE REPRESENTATION OF THE PEOPLE
ACT 1983 AND ITS AMENDMENTS**

**AND: IN THE MATTER OF NATIONAL GENERAL
ELECTION FOR PARLIAMENT FOR
MALEKULA CONSTITUENCY HELD ON
19TH OF MARCH 2020**

BETWEEN: Ambong Marcelin Gulgul

Petitioner

AND: Principal Electoral Officer

First Respondent

AND: The Electoral Commission

Second Respondent

**AND: Barthelemy Marcellino, Simon Esmon,
Shadrack Gracia, Asang Sanick, Julun
Edmon, Sala John and Batick Francois**

Third Respondents

Date of Hearing: 26th May 2020

Date of Decision: 5th June 2020

Before: Justice Oliver.A.Saksak

In Attendance: Ms Anna Sarisets for the Peitioner

Mr Hardision Tabi for First and Second Respondents

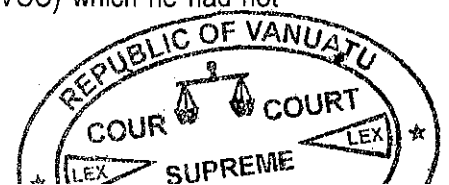
Mr Nigel Morrison for Third Respondents (Excused)

DECISION

1. The application by the First and Second Respondents to strike out the petitioner's petition is allowed.

Background

2. The application filed on 19th May 2020 seeks (a) that the petition filed on 24th April 2020 be struck out in its entirety and (b) that costs of VT 100.000 be paid by the petitioner. It was filed subsequent to the Response filed on the same date which denied the petitioner was entitled to any reliefs he seeks.
3. The grounds are (a) that the petitioner has no foundation for bringing the petition (b) that the petitioner has an outstanding debt with the Vanuatu Cultural Centre (VCC) which he had not



cleared despite he was made aware and did not do so, explaining why his photograph was not included in the ballot papers, and (c) that there was no evidence he would have won had his picture been included.

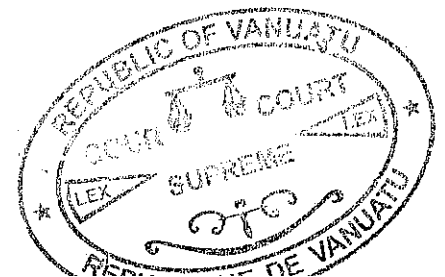
4. The State relied on the sworn statements of Joe Johnson Iati and Gorden Melsul in support of the application.
5. The petitioner objected strenuously to the application on grounds firstly that upon disclosure and inspection as ordered by the Court on 29th April 2020, it was found and established that out of the 39 eligible candidates approved (including the petitioner) only 38 of them had photographs at the relevant 4 polling stations of Melip, Farun, Lingarak and Lakatoro. The 39th candidate was the petitioner who had no photographs, resulting in him scoring " NIL" votes in the final results.
6. Secondly in response to the alleged debt owed to the VCC of VT 1, 215,145, the petitioner has denied the debt and that there is no evidence substantiating the allegation.
7. The petitioner relied on his own sworn statements filed in support of the petition and the statements of Judith Tamata, Jennifer Toa, Richard Shing and Frederick Thyna filed on 25th May 2020, including his response filed on the same date.
8. The Third Respondent filed a response on 18th May 2020 denying the petitioner was entitled to any reliefs at all and said the petition should be dismissed, having waived his rights to invoke section 35 of the Act. They seek costs.
9. Mr Tabi referred to and relied on his written submissions filed on 25th May and Ms Sarisets in response referred to and relied on her written submissions filed on 26th May 2020.

Issues

10. Counsel raised 3 issues as follows-
 - a) Whether or not there was an alleged debt?
 - b) Whether or not the petitioner was served with a notice regarding his debt?
 - c) Whether or not the petitioner was served with a notice of disqualification in accordance with section 26 (3) of the Act?

Submissions

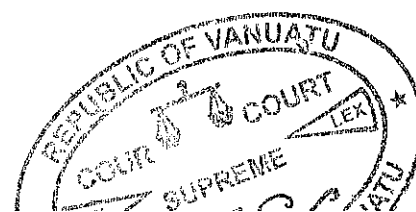
11. For the First issue Ms Sarisets submitted the allegation of debt remains an allegation without any evidence. It was submitted the letter received from the Director of VCC Richard Shing with an attachment containing the alleged debt is insufficient evidence of proof of debt, relying on the statements of Director Richard Shing and Jennifer Toa.



12. On the second issue as to service of a notice and relying on the statements of Judith Tamata and Frederick Thyna, the petitioner was never served any notice.
13. Finally in relation to the third issue of disqualification notice it was submitted based on Joe Johnson lati's statement admitting to an oversight to issue the notice, there was negligence on the part of the First Respondent and therefore section 26 (3) of the Act was in breach. Counsel relied on Ombudsman v Batick, Ombudsman v Jimmy [2001] VUSC 45 as the basis for the argument that where there is a valid point of law, the Court will not strike out a case.

Discussion

14. The three issues raised by Ms Sarisets are indeed issues in the substantive case. Once raised here and determined by the Court it will determine whether this petition stands or fall. If it falls, the matter is brought to finality at this stage.
15. The facts are clear. The petitioner's name was declared and published as an eligible candidate for the 2020 General Elections. But after publication the First Respondent was made aware that the petitioner had an outstanding debt with the VCC since 2014 through 2016. This resulted in the non-printing of his photographs to be included in the ballot papers at the relevant polling stations in the Malekula Constituency. The Electoral Commission decided and endorsed, as a result of the outstanding debt that the petitioner's candidature was invalid, however they overlooked the publication of the disqualification order.
16. From the sworn statement of Joe Johnson lati dated 19th May 2020 annexed as "JJ12" is a letter dated 26th February 2020 by the Director Richard Shing responding to a request by Mr lati. In paragraph 2 last line Mr Shing confirms a borrowing by the petitioner from the VCC. In paragraph 3 Mr Shing confirms 2 separate borrowings of VT 584,245 made up to November 2014 prior to the petitioner's dismissal and upon his return in July 2015 through to March 2016 he borrowed up to VT 631,900. The total is confirmed at VT 1, 215,145. And in paragraph 3 last line, Mr Shing says;
"We understand that the evidence provided is not sufficient, but we can provide receipts to some of the advances made if it is necessary."
17. Further, having made all those confirmations that debts are owned by the petitioner, Mr Shing then deposed to a sworn statement on 25th May 2020 filed in support of the petitioner's petition in contradiction to what he said in his letter of 26th February 2020. That is highly improper and inappropriate. His credibility is therefore in question and it is appropriate that his statement of 25th May 2020 be rejected as inadmissible.
18. The annexure to the letter by Mr Shing has 3 pages. At the top of each page is written the name "**Marcellin**" and "**Ambong Macellin**". The amount of VT 584,245 on the second page is consistent with the amount of VT 584,245 in his letter. Similarly the amount of VT 631,900 on the last page is consistent with the amount of VT 631,900 in his letter.



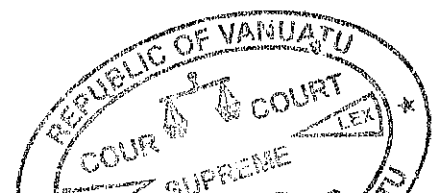
19. With those consistencies and confirmation by the Director of the VCC, what more could the First Respondent or the Electoral Commission have needed? The Electoral Commission acted on that letter and its annexure and made a decision that the candidature of the petitioner was invalid. As a consequence the printing of his photographs and papers was stopped. The First Respondent was entitled to those documents for the purposes of screening of eligible candidates under section 24 of the Act.
20. For those reasons, the Court is satisfied the First Respondent was entitled to reach the conclusion the petitioner had and has an outstanding debt that made him ineligible to stand as a candidate, resulting in his candidature being invalidated. The First Respondent acted within his powers to do so. That is enough to dismiss the petition.
21. The 2 remaining issues are about insufficient or lack of notices of debt and disqualification. It is not necessary to dwell at length on them. As for lack of notice of debt, from the evidence I must infer the petitioner had notice of his debt. From Mr Shing's letter he was dismissed. We are not told the reason. Secondly he adopted an approach that made it difficult for the First Respondent to reach him. He sent an agent to act for him so that in the event there was an omission, he could shift the blame to the First Respondent and his agent. The only possible explanation and inference for all this was that he was aware he has this outstanding debt and he made it difficult to be reached to get an explanation. I am satisfied the petitioner was aware of his debt and that he was notified and in the event he denies any such notice, it was due to him making it difficult for such notice to be effected. The Court is therefore reluctant to place any weight on the statements of Jennifer Toa, Judith Tamata and Frederick Thyna for lack of credibility.
22. The notice as to disqualification has been accepted as due to an oversight. It may be the petitioner has a claim in negligence but this may be the subject of a separate proceeding. It cannot be a valid ground for invalidating elections of the 7 validly elected respondents named as the Third Respondents.

Damages

23. The petitioner's pleading for damages of VT 3,000,000 is insufficient and there is no evidence in support of it.
24. The case of Ombudsman v Batick, Ombudsman v Jimmy [200] VUSC 45 is distinguished and is not helpful to the petitioner.

Conclusion


25. The Petition of the petitioner is dismissed in its entirety.
26. This proceeding has caused unnecessary costs to the respondents but costs will be minimum costs fixed at VT 150,000 payable by the Petitioner as follows-



- a) VT 50,000 to the Third Respondents, and
- b) VT 100,000 to the First and Second Respondents within 28 days from the date hereof.
- c) The VT 20,000 paid as a deposit and kept by the Registrar shall be forfeited and paid instead to the First and Second Respondents through the State Law Office within 7 days from today's date. The balance of VT 130,000 shall be paid within 28 days from today.

DATED at Port Vila this 5th day of June 2020.

BY THE COURT


OLIVER.A.SAKSAK
Judge

