

IN THE MATTER OF: THE REPRESENTATION OF THE PEOPLE'S
ACT [CAP. 146] AND ITS AMENDMENTS

AND IN THE MATTER OF: A NATIONAL GENERAL ELECTION FOR
PARLIAMENT FOR AMBAE CONSTITUENCY
HELD ON 13th OCTOBER 2022

BETWEEN: HOWARD ARU
Petitioner

AND: PRINCIPAL ELECTORAL OFFICER
First Respondent

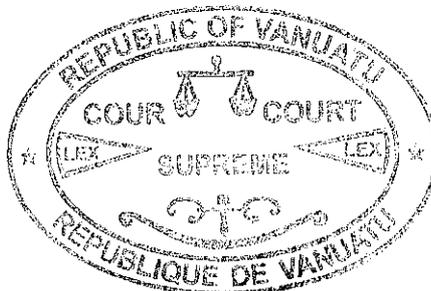
AND: ELECTORAL COMMISSION
Second Respondent

AND: STILL JOHN TARI QETU
Third Respondent

Date of Conference Hearing: 2 November 2022
Dates of examination of votes: 7, 8 & 9 November 2022
Date of Report: 11 November 2022
Before: Chief Justice Vincent Lunabek
Counsel: Mr A E Bal for the Petitioner
Mr T Loughman for the First and Second Respondents
Mr S Kalsakau for the Third Respondent

JUDGMENT

1. This is an amended election petition filed 2nd November 2022. The Petitioner is from Ambae island. He was a candidate at the National General Elections (NGE) held on 13th October 2022 for the Ambae Constituency.



2. The official declaration of the results of the NGE of the 13 October show that the Third Respondent was successfully elected with 521 votes.
3. The Petitioner (Howard Aru) claims that he had obtained a majority of lawful votes than the Third Respondent, Still John Tari Qetu. He claimed that the unofficial results showed that he has obtained 503 votes and the Third Respondent only 498 votes.
4. The Petitioner says that the unofficial tally of votes results in the Constituency of Ambae on the 13th October 2022 election showed that he received at least 503 votes, more than the Third Respondent who only scored 498, whereas the official results declared by the Second Respondent showed the Petitioner received only 501. The Petitioner says that he is challenging the official results made by the Second Respondent in favour of the Third Respondent (Mr. Still John Tari Qetu).
5. The Petitioner, therefore, applies for:
 - (1) An examination of votes in the Ambae Constituency for the 13th October 2022 elections;
 - (2) A declaration that the election of the Third Respondent as a Member of Parliament is void;
 - (3) A declaration by the Second Respondent that the Petitioner was duly elected as a Member of Parliament.
6. On 2 November 2022, the Supreme Court held a Conference hearing and made orders for an examination of the counted votes and void votes and an examination of the counting of votes in respect to the Ambae Constituency in order to determine the Petition pursuant to Section 62 of the Representation of the People's Act [CAP. 146] (*"the Act"*).
7. Section 62 of the Act provides:

"When on an election petition the election is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes the Supreme Court may direct an examination of the counted and void votes and of the counting of votes".

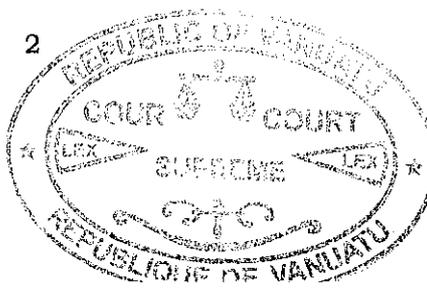
8. Following steps are put in place by the Court on 2 November 2022 to guide the examination process:

1. An Examination of Votes Committee is set up.

COMPOSITION OF COMMITTEE

The Examination Committee is composed of the following:

- a. Counsel for the Petitioner or the Petitioner or his designate;
- b. Counsel for the Second Respondent;



- c. *Counsel for the First Respondent and the Principal Electoral Officer;*
 - d. *Counsel for the Third Respondent, or the Third Respondent or his designate.*
2. **NOTE:** NO MEMBER OF THE ELECTORAL COMMISSION SHALL BE INVOLVED IN THE EXAMINATION OF VOTES EXERCISE UNDER S.62 OF THE ACT SAVE THEIR COUNSEL.

3. SUPERVISION OF EXAMINATION PROCESS AND THE RECOUNTING OF VOTES

The Principal Electoral Officer shall supervise the examination process and the examination of counted votes and void votes and examination of the counting of votes.

4. EXAMINATION PROCESS LIMITED TO ONLY PERSONS NAMED IN POINT 2 AND 3 ABOVE

No other person is allowed to attend the examination process and the recount, except those persons identified and named in Point 2 and 3 above.

5. EXAMINATION PROCESS

Examination process in respect to the Petitioner and the Third Respondent

- (1) *The Petitioner's ballot papers are counted by the Petitioner in the following manner:*
 - (a) *The Petitioner's ballot papers of counted votes are counted and totaled;*
 - (b) *The Petitioner's ballot papers counted, are handed to Third Respondent to be checked by Third Respondent;*
 - (c) *Void votes if any are counted and totaled by the Petitioner and handed to Third Respondent for checking;*
 - (d) *The Third Respondent's ballot papers are similarly dealt with in the same manner as the Petitioner's;*
 - (e) *The counting of votes to take place thereafter.*

6. EVENT OF DISPUTE

If any dispute arises the opinion of the Principal Electoral Officer may be sought and obtained.

If any papers remain disputed by either party, the committee reserves it for the decision of the Supreme Court, setting out in its final decision upon submission made.

7. VENUE, DATE AND TIME FOR EXAMINATION PROCESS TO TAKE PLACE

The examination process referred to in these orders is to start on 07 November 2022 at 9:00AM and to continue on for another (2) days at the Supreme Court Hearing Room 2, Supreme Court Building, Port Vila, Republic of Vanuatu.



8. SUBMISSION OF EXAMINATION REPORT BY EXAMINATION COMMITTEE TO SUPREME COURT

A report must be prepared by the Examination Committee on the process of examination and examination of counted votes and void votes and examination of the counting of votes and be submitted to the Supreme Court within 48 hours of completion of the examination process. The Examination Report must be treated as confidential and submitted by sealed envelope to the Supreme Court by Friday 11 November 2022.

9. HEARING CONFERENCE BEFORE THE SUPREME COURT

A hearing conference is scheduled before the Court on 11 November 2022 at 4:00pm o'clock."

9. The Examination Committee has filed a report of its findings in the Supreme Court Registry on 11 November 2022
10. Below are reproduced the relevant parts of the findings of the Examination Committee's Report for Ambae Constituency on the re-count of the 13th October 2022 NGE in respect to the Petitioner and the Third Respondent:

"In conclusion, it took three consecutive days from 7th to 9th November 2022 for the recounting process. The recounting process has been fully complied with by the Committee. In light of the results obtained after recounting process, it appears that the Petitioner has 500 votes, the Third Respondent has 520 votes and there are 25 void votes. It is clear after the recounting process that the number of votes for both the Petitioner and the Third Respondent is reduced by 1 vote each as shown in the above table.

It is therefore suffice to say and conclude that the Third Respondent has more lawful votes than the Petitioner. The recounting of the votes does not prove that the Petitioner has more lawful votes in the General Election of 13 October 2022. The Third Respondent (Mr Still John Tari Qetu) is lawfully elected candidate as one of the Members of Parliament for Ambae Constituency.

11. The Petition was listed for a conference hearing at the Supreme Court on 11 November 2022 at 4.00PM. Only the Principal Electoral Officer and Counsel for the First and Second Respondents were present, while other counsel and parties were not. The hearing was adjourned to Monday 14 November 2022 at 1.30PM o'clock to hear further from Counsel and or otherwise to give judgment based on the report of the Committee.
12. I peruse the report, I accept the Examination Committee findings that the total number of valid votes cast for the Third Respondent (**Still John Tari Qetu**) is **520**, while the total valid votes cast for the Petitioner (**Howard Aru**) is **500**.



13. I accept and rule that after "the examination of the counted and void votes and of the counting of votes" of the Petitioner and the Third Respondent, the number of lawful votes for each was reduced by 1 vote as shown in the Report, contrary to what was declared by the Second Respondent on 23rd October 2022 as being **501** and **521** respectively.
14. There is, therefore, a margin number difference of 20 lawful votes in favour of the Third Respondent. The Third Respondent (Mr. Still John Tari Qetu) was lawfully elected candidate as the Third Member of Parliament representing Ambae Constituency in the NGE of 13 October 2022.
15. The test is that if the number of miscounted votes exceeds the plurality of the votes cast, the election cannot stand. Applying the test in the present case, the Petition fails and I so rule.
16. The following orders are made accordingly:

ORDERS

1. The Election Petition Case No. 22/ 3066 filed on 2 November 2022 in respect to Ambae Constituency for 13 October 2022 NGE, is dismissed.
2. The First and Second Respondents are to rectify the Official Gazette to reflect the findings of the Examination Committee in respect to the Petitioner, **Howard Aru, with 500 votes**) and the Third Respondent, **Still John Tari Qetu, with 520 votes** by 7 days from the date of this Order or reception of it.
3. The First and Second Respondents are entitled to their costs of VT50,000;
4. The Third Respondent is entitled to his costs of VT150,000.
5. Deposit fees paid by the Petitioner of VT20,000 shall be deducted toward part payment of the costs ordered against him.

DATED at Port Vila this 14th day of November, 2022

BY THE COURT

Vincent LUNABEK
Chief Justice

