

**BETWEEN: JOE YAHKOWAIE NATUMAN MP**  
Appellant

**AND: ESMON SAEMON MP Speaker of  
Parliament of the Republic of Vanuatu**  
Respondent

**Coram:** *Hon. Chief Justice Vincent Lunabek  
Hon. Justice Bruce Robertson  
Hon. Justice Dudley Aru  
Hon. Justice Gus Andrée Wiltens*

**Counsel:** *Mr Edward Nalyal for the Appellant  
Mr Frederick Gilu for the Respondent*

**Date of Hearing:** *Wednesday 11<sup>th</sup> July 2018*

**Date of Judgment:** *Friday 20<sup>th</sup> July 2018*

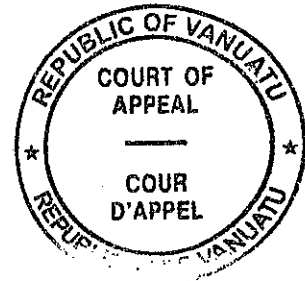
---

## JUDGMENT

---

### Introduction

1. This appeal is lodged against the judgment of the Supreme Court dated 30 May 2018. It concerns the interpretation of Section 3 of the Members of Parliament (Vacation of Seats) Act [CAP 174] and particularly subsection (1) (“the Act”).



## Background

2. On 16<sup>th</sup> March 2018, the appellant was a duly elected Member of Parliament. He was convicted by the Supreme Court of the offences of obstructing or interfering with the execution of a criminal process and sentenced to a term of two years imprisonment which was suspended for a period of two years.
3. Section 3 of the Members of Parliament (Vacation of Seats) Act [CAP 174] provides:-

*“3.(1) If a member of Parliament is convicted of an offence and is sentenced by a court to imprisonment for a term of not less than two (2) years, he shall forthwith cease to perform his functions as a member of Parliament and his seat shall become vacant at the expiration of thirty days thereafter.*

*Provided that the Speaker, or in his absence, the Deputy Speaker, may at the request of the member from time to time extend that period for further periods of 30 days to enable the member to pursue any appeal in respect of his conviction, or sentence, so however the extensions of time exceeding in the aggregate 150 days shall be granted without the approval of Parliament signified by resolution.*

*(2) If at any time before the member vacates his seats his conviction is set aside or punishment other than imprisonment is substituted, his seat in Parliament shall not become vacant as provided by subsection (1), and he may again perform his functions as a Member of Parliament.*

*(3) For the purpose of subsection (1) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of, a fine.” (Emphasis added).*

4. The appellant made no request to the Speaker or the Deputy Speaker to extend the 30 day period under s. 3(1). Nor did any event occur that attracted the operation of s. 3(2). However, on 23<sup>rd</sup> May 2018, the Respondent in his



capacity as Speaker of Parliament signed and issued a letter to the appellant which was delivered to him on 25<sup>th</sup> May 2018. It reads as follows:-

*“Dear Mr. Natuman*

**VACANCY OF YOUR SEAT IN PARLIAMENT**

*We write in our capacity as the Speaker of Parliament of the Republic of Vanuatu.*

*We refer to the above mentioned matter and wish to inform you that as per the Court sentence pronounced on 16<sup>th</sup> March 2018 by the Supreme Court in the Public Prosecutor vs. Joe Yhakowaie and Aru Maralau’s Criminal Case No. 16/1758 SC/CRML;*

*And as per the Advice of the Attorney General dated 29<sup>th</sup> March 2018 to the Honorable Prime Minister in relation to the same (see attached); We wish to inform you that by the operation of the law, mainly the requirement of the section 3 of the Members of Parliament (Vacation of Seats) Act [CAP.174] your seat to which you were elected on 22<sup>nd</sup> January 2016 as Member of Parliament for Tanna Constituency became vacant on 16<sup>th</sup> April 2018 as advised by the Attorney General from the State Law Office to the Honorable Prime Minister and for which a copy was also served to me as Speaker of Parliament on 20<sup>th</sup> April 2018.*

*Consequently, the notices of calling of Parliament from the Office of the Speaker and the Office of the Clerk have not been served to you to allow you to attend the upcoming sessions of Parliament.*

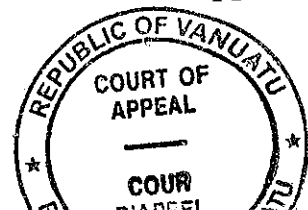
*And it is for the said reasons that, as Speaker of Parliament, I would no longer allow you to enter the Parliament Chamber but rather encourage you to seek Court’s interpretation on your conviction (sic) of two years imprisonment and suspended sentence.*

*May I also wish you well and pray that God almighty will guide you in your future endeavors.*

*Yours sincerely,*

*.....  
Hon. Esmon Saemon MP Speaker of Parliament”*

5. The letter of the Respondent Speaker in effect informed the appellant that by operation of law and mainly the requirement of Section 3 of the Members of Parliament (Vacation of Seats) Act, the appellant’s seat to which he was elected on 22<sup>nd</sup> January 2016 as Member of Parliament for Tanna Constituency became vacant on 16 April 2018 based on the appellant’s suspended imprisonment sentence of 2 years by the Supreme Court. And the appellant



will no longer enter Parliament and no notices of Parliament sessions will be served on him.

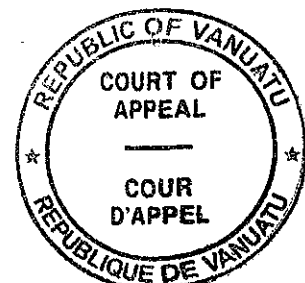
**Urgent Judicial Review Application and Decision appealed against**

6. On 28 May 2018, the appellant filed an urgent application for judicial review challenging the legality of the decision of the Speaker in the letter of 23 May 2018. The appellant sought four (4) orders as follows:-

- (i) *A declaration, that the decision of the Respondent of 23 May 2018 that the seat of the Appellant in Parliament is vacant, is of no effect.*
- (ii) *A mandatory order requiring the Respondent to serve on the Appellant forthwith the notices of calling of Parliament for the upcoming sessions of Parliament commencing 30 May 2018.*
- (iii) *An order prohibiting the Respondent from stopping the Appellant from entering Parliament for the said Sessions of Parliament commencing 30 May 2018.*
- (iv) *A quashing order that the decision by the Respondent of 23 May 2018 that the Parliament seat of the Appellant is vacant, is quashed.*

7. The Supreme Court urgently heard the application on 29 May 2018 and delivered its judgment on 30 May 2018 by dismissing the application in its entirety. In dismissing the application, the Supreme Court judge among other matters was satisfied that:-

*“30.....the provision of section 3 of the Members of Parliament (Vacation of Seats) Act is neither ambiguous nor confusing. Subsection (1) clearly says that it means and applies to any sentence of imprisonment for a term of not less than 2 years (whether the execution of such a sentence has been suspended or not).*



31. *A suspended sentence of imprisonment is and remains a sentence of imprisonment until the condition imposed for its suspension has been fulfilled and the sentence is “deemed to have expired”. Until that event occurs the sentence of imprisonment remains extent and may be executed by activation in accordance with paragraphs (c) and (d) of section 57(1)” (of the Penal Code (Amended) Act No. 25 of 2016).*

8. It is against that decision that the appellant now appeals in this Court.

### **Appeal in this Court**

9. Mr Nalyal on behalf of the appellant advanced four (4) grounds of appeal to re-agitate the arguments and submissions he had advanced in the Supreme Court on behalf of the appellant. However at the hearing before us he conceded that a suspended imprisonment sentence is and remains an imprisonment sentence.
10. Consequently, as a matter of sense and logic any related appeal grounds such as grounds 1, 2 and 3 in the Notice of Appeal in this case, become futile and do not need to be considered any further as the answer to be given to each of them, would flow from the concession by Mr. Nalyal above.
11. The only ground for consideration is ground 4 when it is said the primary judge erred in determining the meaning of the phrase **imprisonment for “a term of not less than 2 years”** and failed to accept the appellant’s submission that the meaning of the phrase **“not less than 2 years”** must mean **“a term exceeding 2 years”**.
12. What the appellant submitted as the interpretation of subsection (1) of Section 3 is a wrong interpretation of the subsection (1) of Section 3 of the Act which is clear and unambiguous. In **Sope Maautamate v Speaker of Parliament [2003] VUCA; Civil Appeal Case 04 of 2003 (9 May 2003)**, this Court held that there is no ambiguity in the words used in that subsection (at p.6). If Parliament had intended what the appellant said it intended, the phrase in subsection (1) of Section 3 of the Parliament (Vacation of Seats) Act should



say a sentence of **imprisonment for “a term of more than 2 years”**. However, that is not what Parliament said.

13. Mr Nalyal accepted also that it is not the intention of the appellant to ask the Court to rewrite the subsection (1) of Section 3 of the Act. Again, In **Sope Maautamate v Speaker [2003] VUCA**, this Court stated:

*“It is beyond the power of the Court to do this. The role of the Court is to interpret, not to rewrite, laws enacted by Parliament”.*

14. Subsection (1) of Section 3 of the Act means what it says – **imprisonment for “a term of not less than two (2) years”**. Imprisonment for a term of two (2) years is the minimum threshold for Section 3 of the Act. Therefore, it applies to the situation of the appellant in this case.

### **Conclusion**

15. We are satisfied that the judge in the Supreme Court was right in his interpretation of subsection (1) of Section 3 of the Parliament (Vacation of Seats) Act [CAP 174] and in its application to the circumstance of the case under appeal. The decision reached by the judge in the Supreme Court and the reasons for it are correct and upheld on this appeal.

### **Result**

16. We dismiss the appeal. We order that the costs follow the event. The Respondent is entitled to costs in the appeal and such costs shall be determined on the standard basis.

**DATED at Port Vila this 20<sup>th</sup> day of July, 2018.  
BY THE COURT**

.....  
**Vincent LUNABEK**  
Chief Justice

