

IN THE COURT OF APPEAL
THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil Appeal
Case No. 25/3822 CAC /CIVA

[2025] VUCA 47

BETWEEN: Stephen Felix in his capacity as Speaker of
Parliament

Appellant

AND: Alatoi Ishmael Kalsakau, Jay Ngwele, Gracia
Shedrack, Anatole Hymak, Marc Muelsul, Micah
Oliver, Andrew Wilbur Napuat, Jesse Luo & Allan Liki

First Respondents

AND: Republic of Vanuatu

Second Respondent

Coram: Hon Chief Justice V Lunabek
Hon Justice R Young
Hon Justice D Aru
Hon Justice V M Trief
Hon Justice M MacKenzie

Counsel: Mr G Blake for the Appellant
Mr S Kalsakau for the First Respondent
Mrs Florence Williams Samuel and Mr D Jonah for the Second Respondents

Date of Hearing: 17th December 2025

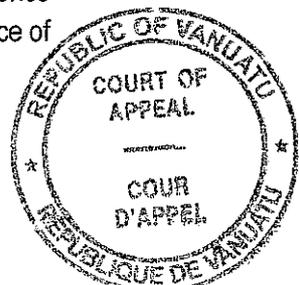
Date of Judgment: 18th December 2025

REASONS FOR JUDGMENT

1. At the conclusion of the hearing of this appeal on 17 December 2025, we announced that the appeal was dismissed, and that we would publish reasons for our decision at a later date. These are our reasons for our decision.

Introduction

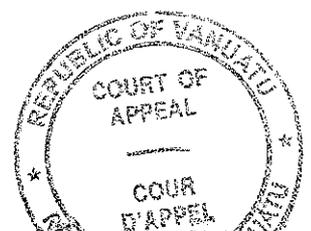
2. At about 9:05 AM on November 14, 2025, the First Respondents filed a notice of motion signed by nine Members of Parliament seeking to move Parliament to pass a motion of no confidence in the Prime Minister (Article 43(2) Vanuatu Constitution). The notice was filed with the office of the Clerk of the Vanuatu Parliament. Parliament was sitting that day.



3. A copy of the notice of motion was provided to the Speaker. After consideration of the notice the Speaker ruled that the notice of motion was not in order. That being the only outstanding business of the Parliament the Speaker closed the Second Ordinary session of Parliament for 2025.
4. An urgent constitutional application was filed in the Supreme Court by nine Members of Parliament challenging the decision of the Speaker as a breach of the Constitution pursuant to Articles 6 and 53 of the Constitution in relation to them. This was filed on 18 November 2025 and heard by this Supreme Court on 8 December 2025.
5. The constitutional application alleged the Speaker had breached the applicants' constitutional rights, by misinterpreting Article 43 (2) of the Constitution.
6. In a judgement of 10 December 2025, the primary Judge concluded the Speaker was wrong to rule the notice of motion was not in order and therefore wrong to close Parliament before any debate and vote with respect to the notice of motion. He ordered the Speaker to immediately summon Parliament to debate the motion by 16 December 2025.
7. This appeal from the decision of the Supreme Court is based on one proposition; that contrary to the judge's conclusion as to Article 43(2) those filing the notice of motion must directly serve the Speaker with the notice. The notice had not been served directly on the Speaker as Article 43(2) required and the failure to directly serve the Speaker meant the notice of motion was invalid. As a result of the failure to directly serve the Speaker he was correct to rule the notice of motion was not in order and in the absence of any further parliamentary business, he was correct to close the session of Parliament.

Factual background

8. The primary Judge had the advantage of sworn statements from some of the nine Members of Parliament who co -signed the notice of motion, Ms Vere the Secretary of the House and Procedures division of the Vanuatu Parliament who is responsible to the Clerk of Parliament who initially received the notice of motion, Maxime Banga the Clerk of Parliament, and the Speaker of Parliament Mr Steven Felix.
9. Mr. Kalsakau, the leader of the Opposition and eight other Members of Parliament signed the notice of motion of no confidence in the Prime Minister. They arranged for one of the Members of Parliament, the Honourable Gracia Shadrack to file the motion at Parliament. On 14 November Mr Shadrack said he took the notice of motion to the office of the Clerk of Parliament. At the time it seems Ms Vere was in Parliament. Shortly after she exited the chamber, she received the notice of motion from Mr Shadrack. After receiving the notice she gave it a notice of motion number, (9 of 2025) and noted it has received at 9:05 AM 14 November 2025. She

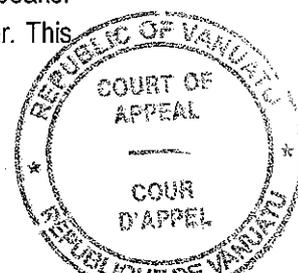


then informed the Clerk, who was in Parliament, of the filing of the motion. Ms Vere provided the Clerk with a copy of the motion.

10. The Speaker Mr Felix says that about 10:50 AM while Parliament was sitting, he was passed a note about the notice of motion and spoke to the Clerk Mr Banga. Mr. Felix then suspended Parliament for 15 minutes to "better inform myself about the motion". Having done so he considered he needed further time to assess the constitutional requirements of Article 43(2) and the notice of motion. He further suspended Parliament until 3:00 PM that day.
11. When the Speaker returned to Parliament at 3:00 PM he ruled that the notice of motion was not in order. He gave his reasons for his ruling. He then closed the second session of Parliament for 2025.
12. In his reasons for ruling the notice of motion was not in order the Speaker noted the notice of motion was "Received this morning at about 9:05 AM ". He referred to Article 43(2) of the Constitution and the authority of parliament to pass a notice of no confidence in the Prime Minister and if passed its effect. He referred to Standing Order 44 which prescribes a process for such a notice of motion.
13. The Speaker was satisfied that the required number of Members of Parliament had signed the notice of motion (one sixth of MPs). However, the Speaker concluded that Article 43(2) "required a prior notice must be given to the Speaker" of the Notice of Motion to comply with the one week notice rule in Article 43(2). He considered that the proper process therefore required a notice to be given to the Speaker of the intention to file a notice of motion of no confidence and after the expiry of a week the notice of motion could be filed, the motion moved, the debate held, and a vote taken in terms of the procedure in Standing Order 44. This procedure had not been followed in this case and so the Speaker considered the motion was not in order.
14. The Speaker also raised the content of the notice of motion as an additional reason why it was not in order. The notice of motion contained as one of its supporting claims an allegation of criminal acts by the Prime Minister. This allegation, the Speaker said, was the subject of police investigation and so the question of any criminality should be left to the police and the courts and not Parliament through the forum of a notice of motion of no confidence in the Prime Minister.

Supreme Court Decision

15. At trial in the Supreme Court, it seems that the basis on which the Speaker had ruled the notice of motion was not in order somewhat changed. The Speaker's counsel submitted that the key phrase in Article 43(2) as relevant in this case was the requirement that the notice of motion be given directly to the Speaker. The movers of the notice of motion had not served the Speaker directly with the notice of motion and accordingly, the notice of motion was not in order. This



different ground of challenge to the notice of motion was reflected in Mr. Felix's sworn statement filed in the Supreme Court when he said (at paras 12 and 13): -

"12. I had not been given notice of the motion in accordance with Article 43(2) of the Constitution, nor had any date been proposed for any hearing of the motion. After considering the language of Article 43(2), I determined that the motion document delivered to an officer of the Clerk, did not comply with the requirements of Article 43(2) of the Constitution and is it did not therefore constitute pending business before Parliament.

13. At no stage did any of the members of the Opposition including any of the persons who signed the motion make any contact with me to give me notice of the motion and it was only indirectly through the Clerk of Parliament that I became aware of its existence."

16. A requirement of direct personal service of the notice of motion on the Speaker was not an issue raised by the Speaker in his reasons for finding the notice of motion was not in order. We will return to this issue later in our judgment

17. The primary Judge was satisfied that on 14 November the Speaker was notified of the notice of motion and had that day received a copy of the notice of motion. In the primary Judge's view that fact was compliance with the obligations in Article 43(2) of giving notice of the motion to the Speaker. The primary judge concluded therefore the Speaker was wrong when he rejected the notice of motion and as a result breached the Constitution when he closed Parliament before the motion could be put and debated. He ordered that Parliament be summoned and the notice of motion be debated by 16 December 2025.

Discussion

18. Article 43(2) of the Vanuatu Constitution provides as follows: -

"43. Collective responsibility of Ministers and votes of no confidence

(1)

(2) Parliament may pass a motion of no confidence in the Prime Minister. At least 1 week's notice of such a motion shall be given to the Speaker and the motion must be signed by one-sixth of the members of Parliament. If it is supported by an absolute majority of the members of Parliament, the Prime Minister and other Ministers shall cease to hold office forthwith but shall continue to exercise their functions until a new Prime Minister is elected."

19. Standing Order 11(4) provides as follows: -

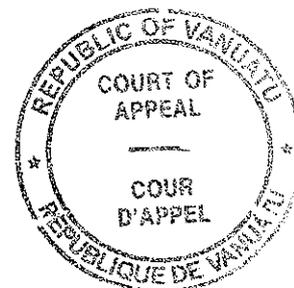
"11. Office of the Clerk

(1)

(2)

(3)

(4) The Clerk is responsible, under the direction of the Speaker, for the administration of the secretariat of the Parliament and subject to the Parliamentary Management Board, has direction and control over all officers and staff of Parliament."



20. Standing order 43(4-7) provides as follows: -

"43.

(1)

(2)

(3)

(4) *When a written motion has been moved and seconded, the Speaker proposes the question on it to Parliament in the same terms as the motion and a debate may then take place. The mover, or in the mover's absence the seconder, is entitled to open such debate and has a right of reply.*

(5) *When the debate on the motion has been concluded, the question is put forthwith by the Speaker.*

(6) *A motion may be withdrawn by the mover with the consent of the seconder, and with the leave of the Speaker, before the question has been fully put on it, but if so withdrawn, the motion may be moved again at some other sitting after due notice.*

(7) *Should either the mover or the seconder withdraws support for the motion, the motion then lapses."*

21. Standing order 44 provides as follows: -

"Motions of no confidence

44. (1) *A Member who wishes to move a motion of no confidence must give written notice by delivering to the Clerk a copy of the motion in French and English signed by the Member and by one other Member acting as seconder, not less than seven (7) days before the day on which the Member intends to move the motion.*

(2) *The Clerk must give a copy of a motion of no confidence to each Member at least one day before the motion is to be debated.*

(3) *The rules contained in Standing Order 43(4)-(7) apply accordingly to any motion of no confidence."*

22. This Court in Kilman v Speaker of Parliament of Republic of Vanuatu [2011] VUCA 15 at 11 said in considering the correct approach to the interpretation of the Constitution:

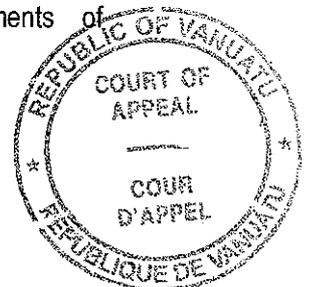
"In such an exercise, regard must be had to the Constitution as a whole and to ensure that it is a clear workable and practical instrument of the State"

23. We agree with the observation of the Chief Justice in Carcasses v Republic of Vanuatu [2008] VUSC 79 that:

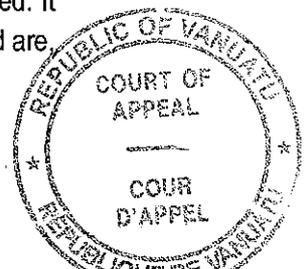
"The constitutionally required procedure for the executive responsibility to parliament is the notice of motion of no confidence under Article 43(2) of the Constitution which must be operational and effective "

24. The appellant submits that Article 43(2) requires that the notice of motion must be given by the movers of the notice directly to the Speaker and not through a third party. If the notice was correctly provided to the Speaker, then counsel for the appellant accepted that the Parliamentary session must continue until the notice of motion can be debated and voted on, having regard to Republic of Vanuatu v Carcasses 2009 VUCA 34.

25. Here the notice of motion was given to the Speaker by the Clerk of Parliament. This, counsel said, was not sufficient to comply with the requirements of Article 43(2). Counsel submitted that the Speaker must become aware of the notice of motion by direct service by one of the movers of the notice of motion and not as here through a third person the Clerk of the House. The fact that the motion was accepted by parliamentary administrators (Ms Vere) and given a notice of motion number did not cure the failure to comply with the service requirements of Article 43.

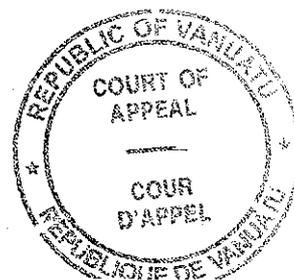


26. We are satisfied that the provisions of Article 43 were complied with, and that the Speaker was wrong to conclude the notice of motion was not in order and therefore wrong to adjourn Parliament.
27. The Speaker in his reasons given on 14 November did not reject the notice of motion because of the circumstances of the service of the notice of motion. As we have observed, at paras 13 and 14, the Speaker rejected the notice of motion because one week's notice of the intent to move the notice of motion had not been given and that one of the grounds for the motion of no confidence was subject to a police investigation.
28. Neither reason could have justified the rejection of the notice of motion. The process in Article 43 and Standing Order 44 is that once the notice of motion was given to the Speaker the member of Parliament who wishes to move the motion must wait seven days before the member can move the motion in Parliament and the debate and voting takes place. Here the notice of motion filed on 14 November 2025 should have been provided with a date for debate not less than seven days from the filing date. Then the Speaker should have directed the notice of motion could be moved not less than seven days from the filing date. The Speaker was therefore wrong to conclude that the act of filing the notice of motion somehow undermined the 7-day rule. Once filed it required no more that the allocation of a date no less than 7 days from the date of filing for the motion to be moved and the debate held.
29. As to the conclusion by the Speaker that a police investigation of one of the propositions supporting the notice of motion also meant the motion was not in order we make the following point. We do not consider the fact that the police were investigating the same issues as raised to support the notice of motion is any impediment to the notice of motion or the subsequent debate and vote. These are quite separate processes, and each can take place without interference from the other.
30. The appellant's submissions before the Supreme Court and this Court required direct personal service of the motion on the Speaker. Such an obligation would limit its effectiveness and unnecessarily narrow the circumstances under which the Speaker could receive notice of such a motion.
31. The purpose of Article 43 (2) is to ensure that when a Notice of Motion for a no confidence vote is filed the Speaker can trigger the process in Article 43(2) and Standing Order 44. The Speaker can ensure sufficient members have signed the motion, the debate is not before 7 days, and that MPs are notified at least one day before the debate. The focus on the Article is receipt by the Speaker of the notice to start the no confidence vote process.
32. Nor do we consider the plain words of Article 43 require service by a mover of the notice of motion directly on the Speaker. Article 43(2) does not express such a requirement. The Article requires one week's notice before the motion of no confidence can be moved and debated. It does not require service of the notice of motion itself on the Speaker at all. The words used are



"At least 1 weeks' **notice** of such a motion shall be given to the Speaker...". The plain meaning is that the Speaker must be told about the notice of motion at least 7 days before the motion can be moved and debated.

33. Article 43(2), as we have noted, identifies the overall requirements of such a notice of motion. Standing Order 44 identifies a number of practical requirements for a motion of no confidence. Importantly it identifies that such a motion is to be in writing and delivered to the Clerk in English and in French. This provision reinforces the proposition that the notice of motion need not be directly served on the Speaker. Under Standing Order 44, the notice of motion enters the Parliamentary system by delivering the motion to the Clerk. It would make little sense to require that there be a parallel service obligation with respect to the Speaker.
34. Standing Order 44 requires that not less than seven days be given from filing to moving the motion. The purpose of the seven days' notice is identified in Standing Order 44. This enables the Clerk to give a copy of the notice of motion to all Members of the Parliament before the debate commences.
35. Standing Order 43 (4) to (7) sets out the process for the debate and voting on the notice of motion.
36. There is no requirement in the wording of Article 43(2) that the notice of motion or indeed a notice advising an intention to file such a motion be given personally by the mover to the Speaker. The plain words of the Article require only that the Speaker be given notice. As we have noted above Standing Order 44 sets out the obligations of a mover of a no confidence motion. They must deliver the motion to the Clerk of Parliament, and it must be signed appropriately by sufficient Members of Parliament. The Clerk's obligation will then be to notify the Speaker of the fact of the notice of motion and an appropriate date allocated for the debate.
37. This is the process that occurred here until the Speaker's ruling. The notice of motion was filed at the Clerk's office in Parliament. The Clerk was shortly provided with the notice by the Clerk's staff. The Clerk in turn gave the notice of motion to the Speaker. The Speaker did not then object that he had not been personally served with the notice of motion. Once that was done the process complied with all requirements in the Standing Orders and the Constitution. The next step was to allocate a date for the notice of motion to be put to Parliament no sooner than seven days after the notification.
38. We are satisfied therefore that the process undertaken by those who signed the notice of motion, and the Clerk of Parliament was in accordance with both Article 43(2) of the Constitution and the Standing Orders of Parliament. In those circumstances we are satisfied that the primary Judge was correct, and that the Speaker of Parliament was wrong when he concluded the notice of motion was not in order.



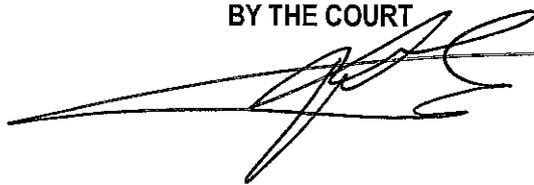
Disposition of the appeal

39. For completeness we set out the Orders made by this Court on 17 December 2025 to give effect to these reasons. These Orders are:

1. The appeal against the Supreme Court's conclusion is dismissed.
2. The judge in the Supreme Court made six declarations and Orders. The appropriate declarations are as follows. They will apply in substitution for the Supreme Court Orders (except as to the costs Order made in the Supreme Court).
 - a. The Parliamentary Notice of Motion No. 9 of 2025 is in order and a valid Notice of Motion pursuant to Article 43(2) and the Standing Orders of the Vanuatu Parliament.
 - b. The Speaker's decision to close Parliament on 14 November 2025 without allowing Notice of Motion No. 9 of 2025 to be moved, debated and voted on was unconstitutional and is quashed.
 - c. The Speaker of Parliament is hereby required to give to all Members of Parliament a copy of the Notice of Motion No. 9 of 2025 by 4pm 17 December 2025.
 - d. The Speaker of Parliament is to summons the Vanuatu Parliament to debate the Notice of Motion No. 9 of 2025 on Friday 19 December 2025 at 10.30am.
3. The Costs Order made in the Supreme Court is confirmed.
4. The Appellant is to pay the First Respondent costs of VT150,000.

Dated at Port Vila this 18th day of December 2025.

BY THE COURT



Hon. Chief Justice, Vincent Lunabek

