

BETWEEN: Morris Manmelin

Petitioner

AND: Principal Electoral Officer

First Respondent

AND: Christopher Emele

Second Respondent

Date of Hearing and : 22nd May 2020

Date of Decision: 26th May 2020

Before: Justice Oliver.A.Saksak

In Attendance: Mr Daniel Yawha for the Petitioner

Ms Florence Williams for First Respondent

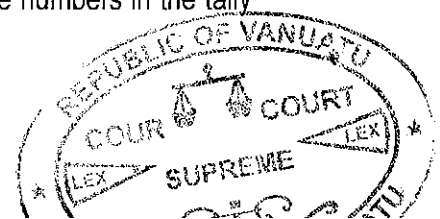
Mr John Less Napuati for Second Respondent

DECISION

1. The application to strike out the petition of the petitioner is dismissed.
2. The petitioner filed his petition on 27th April 2020 within the 21 days allowed in section 57 (1) of the Representation of the People Act [CAP 146] (the Act). He filed his own sworn statement in support of the petition on the same date. He filed 3 other sworn statements in support from Henry Nelson, Wedford Frank and George Womdo on 5th May 2020, but these were sworn well in advance on 26th April.
3. The petitioner seeks a recount of the votes cast in the Torres Constituency on ground that he had the majority of lawful votes of 1021 and the second respondent scoring only 971 votes and yet he was declared elected.
4. The second respondent opposed the application on grounds that the petitioner lacked evidence to show that even if there were breaches of the Act, those breaches were not of such magnitude as to affect the result of the election warranting a recount. Counsel relied on Sope v PEO [2009] VUCA 62. Further Counsel relied on Joe v Andy [2020] VUSC 77 in support of the argument that all the other statements relied on by the petitioner were filed outside the 21 days period. Further the allegation that a boat driver by the name of Amos took the ballot boxes from Ureparapara polling stations across to Sola for 3 hours has not been substantiated by his own statement. Further that this allegation has been rebutted by the statement of Jonathan David

Toara. It was therefore argued and submitted that removing that evidence, it leaves the petition without any foundation and therefore there is no need for a recount. Counsel placed reliance on the sworn statements of the Second Respondent filed on 19th and 22nd May 2020.

5. The State merely supported the application and relied on the sworn statement of Jonathan David Toara filed on 19th May 2020.
6. Sadly the statements of Mr Emele filed on 19th and 22nd May 2020 do not contain facts as they should, rather they are submissions instead. Submissions are not evidence.
7. The submission that the counting was transparent because counting was done over the Television is untenable. Not everyone in the outer-Islands of Vanuatu have access to Television.
8. The petitioner relied on 3 other statements filed on 5th May 2020. These were sworn before a Commissioner for Oaths on 26th April 2020. Technically in law that is the filing date due to the circumstances of COVID-19 and the State of Emergency. The case of Joe v Andy was dismissed because there were no other sworn statements filed to show details of the alleged bribery and corruption. Had they followed the process followed by the deponents of the statements filed in support of the petitioner's petition, the position might have been different. In any event this case differs in that it is not alleging bribery and corruption. It is simply seeking a recount because the petitioner had a majority of lawful votes than the second respondent.
9. Section 62 of the Act gives the petitioner standing and foundation to bring this petition. He has shown he had the majority of lawful votes and that is enough to warrant a recount.
10. The statement of Jonathan David Toara filed on 19th May 2020 disclosed as "N" a copy of the official Gazette published on 8th April 2020. It shows for the constituency of Torres there was a total of 2,966 registered voters and of this number it is recorded only 2,058 voted. It means that 13 votes have not been accounted for.
11. Further it is published that the second respondent scored 1012 votes and the petitioner scored only 973 votes. However it has been established by the unofficial tally disclosed by the petitioner that it was him who scored 1021 votes and the second respondent scoring 971 votes. These figures are not consistent with the numbers published which are 1012 for second respondent and 973 for the petitioner. Clearly there has been a reversal of the results of election for the Torres Constituency. And a recount is warranted. Clearly the petitioner has shown he scored the majority of votes.
12. The Republic through counsel Ms Williams confirmed this by informing the Court all the figures in the final tally sheets were and are consistent with the figures shown in the unofficial tally by the Petitioner, except the figures for Lehali and Divers Bay. That is sufficient as a confirmation of the petitioner's allegation. No further evidence is needed to confirm the numbers in the tally results he annexed to his statement.



13. For these reasons the application to strike out the petition is dismissed and I order that there be a recounting of the votes cast for the whole constituency of Torres with 12 Polling Stations of Lehali, Divers Bay (Lesereplag), Veverau, NapQue, Hiu, Loh, Tegua, Toga, Valua, Totolag, Rah and Nerenigman, within 14 days from the date hereof.

**DATED at Port Vila this 26th day of May 2020
BY THE COURT**


OLIVER A. SAKSAK *
Judge

