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

**Constitutional  
Case No. 23/2691 SC/CNST**

**BETWEEN: Meltek Sato Kilman Livtunvanu**  
*Applicant*

**AND: The Republic of Vanuatu**  
*First Respondent*

**AND: Seule Simeon Davidson the speaker of parliament**  
*Second Respondent*

**Date of 1<sup>st</sup> Conference:** *11<sup>th</sup> October, 2023*  
**Date of Decision:** *13<sup>th</sup> October 2023*  
**Before:** *Justice E. P. Goldsbrough*

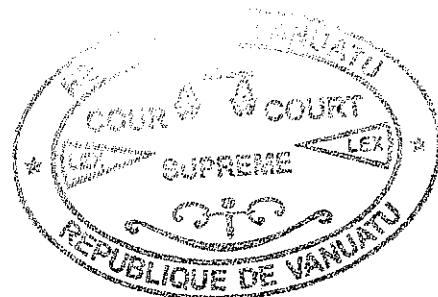
**In Attendance:** *Dunning, P KC and Ngwele, J for the Applicant*  
*Attorney General for the First Respondent*  
*Blake, G for the Second Respondent*

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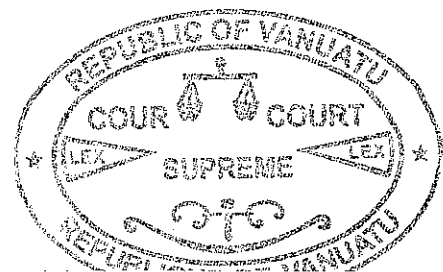
**DECISION**

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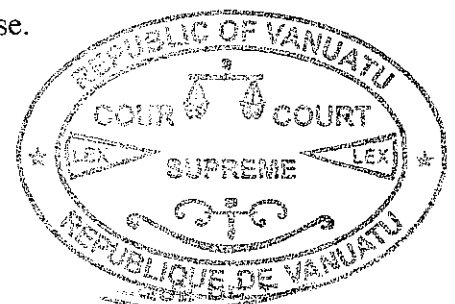
1. A Constitutional Petition, described as urgent, dated 7 October 2023 but not filed in the Supreme Court until 9 October 2023, had its 1<sup>st</sup> mention on 10 October 2023 to fix a convenient date and time for a Rule 2.8 Constitutional Applications Rule 2003 (CAR). That convenient date arrived at was 11 October 2023 when this matter was called for 1<sup>st</sup> Conference.



2. The petitioner, described in the Petition as the Applicant is further described as the Prime Minister of Vanuatu. Following a motion of no confidence that was heard and determined against the Applicant in Parliament on 6<sup>th</sup> October 2023 and the subsequent election of a Prime Minister, that description may well be considered presumptuous.
3. At least it serves to set the scene. The petition is based on the notion that the calling of an Extraordinary Session of Parliament to consider the Motion of No Confidence at the request of 26 members rather than 27 made the sitting unconstitutional. This is governed by clause 21 (2) of the Constitution. The calculation of a majority begins with the number of members. Whilst other legislation provides for the number of seats, the number of members reflects those duly elected and who have not vacated their seat or resigned, Here there is an issue over whether, of the elected 52 members, one has vacated his seat under section 2(d) of the Members of Parliament (Vacation of Seats) Act [Cap 174].
4. That issue is the subject of another civil proceeding which is pending in the Court of Appeal. At first instance, the Election Petition brought by the affected member was dismissed. The Supreme Court found that the provisions of section 2(d) had been met and declared the member to have vacated his seat by operation of the provision. The matter was appealed and is listed for an appeal hearing on 10 November 2023. Pending the hearing of the appeal the Court of Appeal has granted a stay of the order as from 5 October 2023.
5. The Supreme Court had, both before and after the substantive trial of the matter, refused applications for stay.
6. In submissions, counsel for the Applicant submitted that the Petition should succeed regardless of the decision of the Court of Appeal to stay the effect of the Supreme Court order declaring the seat vacant. This is further explained as, in the view of the Applicant, the vacation of seat is not effective unless and until the Supreme Court declares it to be.
7. The submission continues to suggest that, once controversy over the vacation of seat has arisen and remains unresolved by order of the Court, the seat is not vacated.



8. With respect to that argument, it is flawed and is unsupported by the many authorities of the Court of Appeal where the question of the effect and operation of this legislation has been considered.
9. At this point I exercise caution, seeking to respect the rights and responsibilities of the parties to that appeal. Suffice it to say that I have considered the authorities in the Court of Appeal, and, in many respects, those authorities do not support the submission of the Applicant.
10. The submission continues as to what the effect of a successful appeal might be as regards the position of this Applicant; nowhere in those submissions is there any discussion of the contrary position. That surely suggests an intricate interrelationship between the pending appeal and this Petition.
11. But, in the main, the Petition succeeds or fails, at present, on an assessment of the effect of section 2(d) of Cap 174. Suffice it to say that, on my understanding of the authorities, the interpretation suggested by the Applicant is not correct.
12. In coming to that conclusion, first considering the role, if any, of the Speaker, the Court of Appeal set out in *Korman v Natapei* [2010] VUCA 14, especially at paras. 17 & 18, and the reference therein to the Full Bench decision in *Boulekone v. Timakata* [1986] VUSC (1 October 1986). Then on another question raised *Vatu & Ors v Muele & Ors* [2007] VUCA 4 albeit concerning a similar position within the context of local government. Finally, I found two cases concerning the effect of a Presidential pardon enlightening as therein is contained a discussion of retrospective effect. [2003] VUCA 5 and CAC 15 of 2004 of 5 November 2004.
13. The position may change following the decision on appeal in CAC 2642 of 2023 but the function of this Court is to determine whether a date be fixed for a hearing or whether the Petition be struck out on the material now presented. On that material now presented, the Petition must be struck out as the Petitioner has no arguable case.



14. Unless submissions to the contrary are filed within 7 working days following the publication of this decision, an order for the Applicant to pay the costs of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, to be agreed or taxed, is made.

**DATED at Port Vila this 13<sup>th</sup> October, 2023.**

**BY THE COURT**

*E.P. Goldsbrough*

**E.P. Goldsbrough  
Judge of the Supreme Court**

