

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

Election Petition No.30 of 1998

IN THE MATTER OF
REPRESENTATION OF THE PEOPLE
ACT [CAP 146]

Between : Peter Salemalo of C-Vanuaaku
Pati, Port-Vila, Efate in the
Republic of Vanuatu

Petitioner

And : Paul Ren Tari of C/- National
United Party, Port-Vila, Efate in
the Republic of Vanuatu

First Respondent

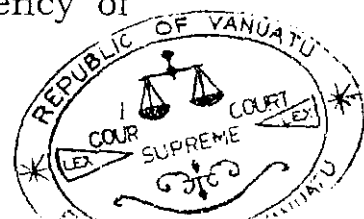
And : The electoral Commission of
Vanuatu of PMB 033, Port-Vila
Efate in the Republic of
Vanuatu

Second Defendant

Coram : Mr Justice V. Lunabek, Acting Chief Justice
Mr Mark Hurley for the Petitioner
Mrs Susan B. Barlow for the First Respondent
Mr Bill Bani for the Second Respondent

JUDGMENT

Before me is an election petition praying, inter alia, that the National General Elections to Parliament of the Republic of Vanuatu held on 6 March 1998 for the constituency of Maewo is hereby declared void and that Peter Salemalo, the Petitioner be declared duly elected for the constituency of



Maewo in respect of the National General Elections to Parliament of the Republic of Vanuatu held on 6th March 1998 in lieu of Paul Ren Tari, the First Respondent, upon the several grounds hereinafter mentioned.

I. THE PARTIES

The Petitioner, Peter Salemalu was a candidate in the National General Elections held on the 6th March 1998 for the constituency of Maewo. The Petitioner is now working at the Prime Minister's Office, Port-Vila, Vanuatu. He is affiliated to Vanuaaku Pati (V.P.).

The first Respondent, Paul Ren Tari was the successful candidate in the National General Elections held on the 6th March 1998 for the Constituency of Maewo. He is affiliated to National United Party (N.U.P.).

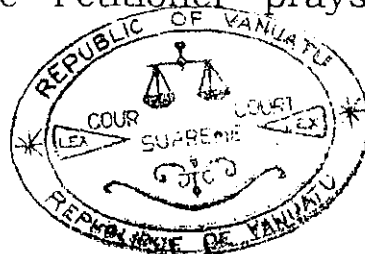
The second Respondent, the Electoral Commission of Vanuatu made a declaration on the 16th March 1998 to the effect that the first Respondent, Paul Ren Tari was duly elected as Member of Parliament for the Constituency of Maewo. (Annexure "B" to the Amended Petition).

The voting in the National General Election held on the 6th March 1998 for the Constituency of Maewo appeared to be as follows :

<u>Candidates</u>	<u>Affiliation</u>	<u>Votes</u>
Tari Paul Ren	NUP	486
Peter L. Sale	VP	483
Gregory Tarawban	MPP	209
Jonah Tokanase	VRP	43
Ebonsezer Boeliv	LP	55

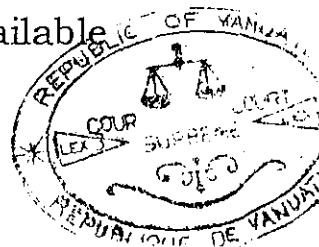
II. THE PETITION

In his Amended Petition, the Petitioner prays for the following relief :



1. Pursuant to section 60 (1) of the Representation of the People's Act [CAP 146] the National General Elections to Parliament of the Republic of Vanuatu held on 6th March 1998 for the Constituency of Maewo is hereby declared void.
2. Pursuant to section 60(1)(b) of the Representation of the People Act [CAP 146] it is hereby declared that Peter Salemalo be declared duly elected for the Constituency of Maewo in respect of the National General Elections to Parliament of the Republic of Vanuatu held on 6th March 1998 in lieu of Paul Ren Tari.
3. Pursuant to section 61(1) of the Representation of the People Act [CAP 146], it is hereby declared that the National General Election of the First Respondent to the Constituency of Maewo on 6 March 1998 is void due to the breaches by the First Respondent of the provisions of section 45 and 46 of the Representation of the People Act [CAP 146].
4. Pursuant to section 61(1) of the Representation of the People Act [CAP 146] it is hereby declared that the National General Election for the Constituency of Maewo on 6 March 1998 is void due to the breaches by the Second Respondent, its servants and/or agents of section 16 and Part X of the Representation of People Act [CAP 146].
5. Such further order or other relief as this Honourable Court deems just.
6. That the Respondents be ordered to pay the costs of this Election Petition.

The Petitioner relied upon three grounds. The first and second grounds were made against the Second Respondent, the Electoral Commission of Vanuatu. The Petitioner alleged respectively that there are breaches of Part X of the Act. Discrepancy of Electoral Records held by the second Respondent. It is also alleged that the Second Respondent breaches section 16 of the Act to the effect that the electoral list for the Constituency of Maewo was not made available



for inspection by the Public during the immediately preceding calendar year for a period of not less than 14 days which period ended on 15 June 1997.

During the course of final submissions, counsel for the Petitioner, on behalf of his client, conceded that upon the completion of the Electoral Commission of Vanuatu's case, the Second Respondent and having heard the evidence of the two witnesses namely, Mrs Jeannette Bolenga, the Principal Electoral Officer and Mr Tom Alick, the Deputy Principle Electoral Officer, the Petitioner did not make out his case against the second Respondent. There is no need for me to deal with grounds 1 and 2 levelled against the Second Respondent anymore including evidence in support thereof.

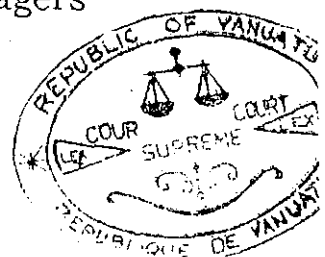
The only ground relied upon is as follows :

THIRD GROUND - BREACHES OF SECTIONS 45 & 46 OF THE ACT

14. The First Respondent breached sections 45 and 46 of the Act by directly and/or indirectly making gifts or procurements to persons in order to induce such persons to procure, or endeavour to procure and/or for the purpose of corruptly influencing such persons to vote for the First Respondent.

PARTICULARS

- A. 2 voters, namely, Mrs Evelyn Koko and Mrs Helen Tambe observed the first Respondent and Mr Shadrack Tari, Mr Enock Tari and Other National United Party ("NUP") supporters at Nasawa village, Maewo presenting gifts in the form of two (2) heads of kava, four (4) mats plus (1) pig to Mr Silas Boe, Lendy Toa, Henry Toa and other villagers.
- B. In further breach of sections 45 and 46 of the Act, 2 voters, namely, Francis Williams and Ambrose Toa observed the first Respondent and his supporters on or about 26 February 1998 presenting gifts in the form of 2 local mats to chief Gabriel Boe and his villagers



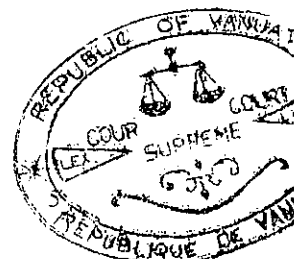
purportedly to induce them to vote for the first Respondent.

- C. In further breach of sections 45 and 46 of the Act, one John Grimton of Kerepei village, Maewo observed a custom ceremony take place at Kerepei village on 4 march 1998 at approximated 3.45pm. At the said custom ceremonies, a UMP leader gave a custom mat to the First Respondent.

III. THE DEFENCE

The First Respondent filed an Affidavit in which he replies to the Petitioner's allegations to the following effect as from paragraphs 4 to 16 :

4. On or about 26th February 1998 he visited Naviso village on Maewo at the invitation of Chief Norman. He did not know the purpose of his visit until he arrived there at which time Chief Norman explained to him that he had arranged a custom peace ceremony.
5. During November 1997 he was not a politician but he was Manager of the Maewo Capacity Project in collaboration with World Vision Vanuatu, and he was secretary to Chief Matthew Ngwele.
6. In that capacity, the chief and he were involved in solving domestic problems and dealing with petty crime in the village.
7. They had been involved in solving by Court of custom at Ngota, a fight between Ngota people and Naviso people. At the time of the fight at Naviso a young man of Ngota was seriously injured by people of Naviso.
8. He was a Judge in the meeting which decided to penalise the people of Naviso and they were ordered to pay 50,000VT in compensation and one pig to the village of Ngota.



9. In February 1998 Chief Norman gave him two mats when he arrived at Naviso and he went through a custom ceremony of washing his face to show a sign of peace and he handed two mats to Gabriel Boe. This was because Chief Norman explained to him that the people of his village were still bitter about the events of November and his part in them.

10. He did not bring any mats to the village of Naviso and the handing over of the two mats was a custom ceremony to re-establish peace between him and the villagers. He did not attempt to bribe or unduly influence anyone or to solicit votes.

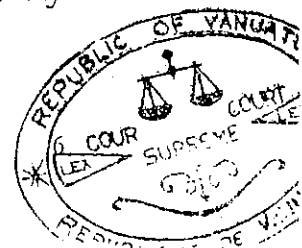
12. He has read the unsworn Affidavits of Evelyn Koko and Helen Tambe. He does not deny that he went to Nasawa village sometime about 14th February 1998 in the company of Shadrack Tari and Enock Tari, his father. They spoke to members of the UMP including Silas Boe, Lendy Toa and Henry Toa.

13. He had been advised by executives of his party the NUP and the UMP in Vila that both parties agreed to work together in the election and the UMP had agreed not to fill a candidate in the seat of Maewo but they would support his candidature for the seat. Silas Boe is the President of the UMP in Nasawa and Lendy Toa is the vice-President. Nasawa has long been a UMP stronghold.

14. In October of 1980 during the "Independence Rebellion" he was a policeman at the time and he had been involved in arresting people from Nasawa village during the troubles.

15. He was invited to Nasawa in February 1998 to participate in a custom ceremony for the purpose of effecting a reconciliation between the village and himself. Gifts were exchanged and they drank kava together.

16. He has never had any intention to induce anyone to vote for him by giving anyone gifts and he denies absolutely



that he has breached any provisions of the Representation of the People Act [CAP 146].

IV- LOCUS STANDI OF THE PETITIONER

Sections 55 of the Act provides that :

"An election Petition may be presented by one or more of the following :

- (a) a person who is registered to vote at the election to which the petition relates ;*
- (b) a person claiming himself to have been a candidate at such election."*

Section 55(b) gives the Petitioner, as a candidate, the right to question the validity of the National General Election held on 6th March 1998 for the Constituency of Maewo by the presentation of an election petition.

V - ELECTIONS OFFENCES

Part XV of the Representation of the People's Act [CAP 146] deals with Election Offences.

The relevant provisions in relation to this case are as follows:

Section 45(1)(a)(iii) says :

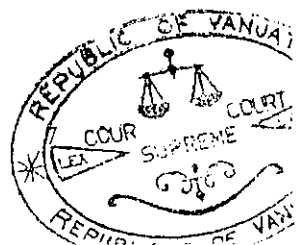
"(1) A person commits the offence of bribery-

(a) if he directly or indirectly by himself or by other person-

(i) ...

(ii) ...

(iii) makes any such gift or procurement to or for any person in order to induce that person to procure, or endeavour to procure, the election or any candidate or the vote of any voter ;



or if upon or in consequence of any such gift or procurement he procures or engages, promises or endeavours to procure the election of any candidate or the vote of any voter ;
...”

Section 46 of the Act says :

“ A person commits the offence of treating-

(a) if he corruptly by himself or by any other person either before, during or after an election directly or indirectly gives or provides or pays wholly or in part the expenses of giving or providing any food, drink or entertainment to or for any person-

(i) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting ; or

(ii) on account of that person or any other person having voted or refrained from voting or being about to vote or refrain from voting;

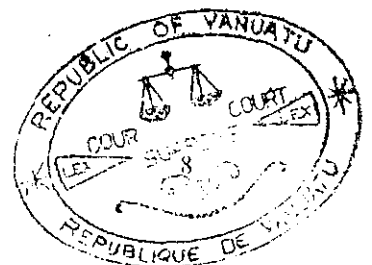
(b) If he corruptly accepts or takes food, drink or entertainment offered in the circumstances and for the purpose mentioned in paragraph (a) of this section.”

By virtue of section 48, a person who is guilty of bribery or treating is guilty of a corrupt practice.

Section 48 provides :

“(1) The offences of personation, bribery, treating and undue influence are corrupt practices for the purposes of this Act.

(2) A person convicted of a corrupt practice shall be liable on conviction to a fine not exceeding VT100,000 or to imprisonment for a term not exceeding 5 years or to both such fine and imprisonment.”

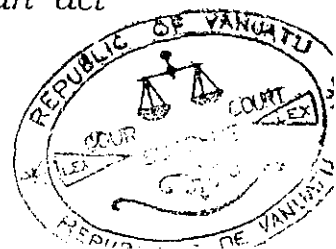


VI- MEANS REA

It is to be noted that in sub-paragraph (iii) of paragraph (a) of sub-section (1) of section 45 of the Act, the word "corruptly" has not been used for any of the specified acts done thereunder to constitute bribery, whereas any such act done under section 46 is required to have been done "corruptly" to constitute treating. This is because, in the former case, the very proof of the act itself allows the Court to draw a prima facie inference that it was done with a corrupt intention [which amounts to bribery.]

In the case of the Borough Limerick (1869)¹ O'Malley & Hardcastle 260, Mr Baron Fitzgerald dealt with a similar statutory provisions as follows :

"I am satisfied that where in the formal part of the 2nd section of the Corrupt Practices Act reference is made to offers and promises made before the vote is given, the legislature clearly intended the Court to draw a prima facie reasonable inference from the act done as to the purpose for which it was done, leaving to the other side to rebut that inference if they could. Every forbidden act done for the purpose mentioned in this Act is to be regarded as done for a corrupt purpose, and one shown that a forbidden act is done for any of the purposes mentioned in the Act it immediately becomes a corrupt act, though it would otherwise have been a purely innocent one ; that is to say, in some cases the act itself afford ground for reasonable inference of the intention with which the act is done, and there the legislature has not introduced the word "corrupt" ; and if the act is simply proved to be done, the Court is allowed to draw from it the ordinary reasonable inference prima facie that it was done for a corrupt purpose. But there are other cases in which the legislature, from some reason or other, appears to have thought the inference not so strong and in these cases it introduces the word "corruptly" for the purpose of showing that it did not intend the ordinary inference or intention to be relied upon... so here, where the legislature has not introduced the word "corruptly", and the actual and reasonable inference from the act is that it was an act



done for the purpose contemplated, the legislature has treated it as corrupt without mentioning any thing more about it. But in those cases in which it seems to have been intended that the Court should not infer the purpose simply and solely from the act, it has introduced the word "corruptly". The whole proof of corruption, as it appears to me, consists in showing that the forbidden act is done for a purpose not innocent according to the Act of Parliament".

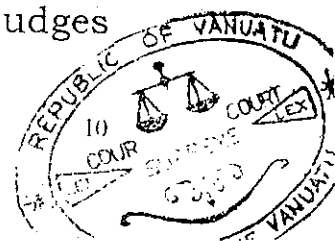
[Cited by the Hon. R. Lussick, Chief Justice in the case of Teatao Teannaki (Petitioner) v. Teburoro Tito (Respondent), dated 28 February 1996, Judgment of the High Court of Kiribati, unreported].

Now, applied to the present case, if it were to be proved that the Respondent gave mats to a person in order to induce that person to procure the election of a candidate or to induce an elector to vote ; or upon or in consequence of giving the mats, the First Respondent procures, or engages, promises to procure the election of a candidate or the vote of a voter, the Court would be entitled to draw a prima facie inference that he did so with a corrupt intention, even though the word "corruptly" has not been used in section 45(1)(a)(iii) and if he failed to rebut that inference then the petitioner would be entitled to succeed.

The word "corruptly" is not defined in the Representation of the People's Act CAP 146. The Court gets some assistance from the Halsbury Laws of England, Fourth Edition, paragraph 768 which reads : "corruptly" imports intention ; it does not mean wickedly, immorally or dishonestly or anything of that sort, but doing something knowing that it is wrong, and doing it with the object and intention of doing that thing which the statute intended to forbid.

And in his decision in the County of Norfolk (Northern District) Case, Colman v. Walpole and Lacon (1869) 1 O'M & H 236 ; 21 LT 264, Blackburn J. explained the meaning of "corruptly" in this way :

"Then comes the section which governs the matter, and which we have to consider and that is the 4th section, which says "every candidate at an election who shall corruptly". Now I may stop at that and say that I believe all the Judges



have considered that the word "corruptly" governs the whole, and that means, with the object and intention of doing that thing which the statute intended to forbid. What that is I will see presently. It does not mean corrupt in the sense that you may look upon a man as a knave or villain, but that it is to be shown that he was meaning to do that thing which the statute forbids".

The question then to be considered is the state of mind of the First Respondent. Did the First Respondent, Paul Ren Tari, provide the mats for the purpose of corruptly influencing people to vote for him or was his intention merely to perform custom peace ceremony? If the former intention is proved then the First Respondent will be guilty of the corrupt practice of bribery and his election will be avoided. If not proved, then the First Respondent will be declared to have been duly elected and the Petition be therefore dismissed.

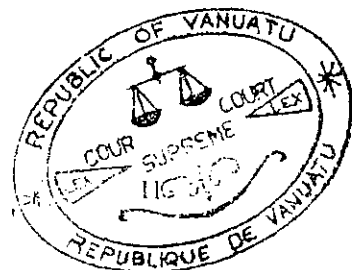
The Court was advised by the First Respondent's Counsel, Mrs Susan Bothmann Barlow, at the time of hearing the Petition that the First Respondent is not going to adduce any evidence. His case is that on any standard of proof, the Petitioner, has not fulfil his burden of proving his case against him (First Respondent). The First Respondent is making a no case submission on the basis that there is no evidence that the First Respondent is giving the mats with a corrupt intention.

VII. THE BURDEN AND STANDARD OF PROOF

I must remind myself that the onus is upon the Petitioner to prove his case according to the civil standard of proof, that is, on the balance of probabilities. On 22nd August, 1998 the following question was put before this Court for its determination :

Is the Representation of the People Act [CAP 146] criminal or civil in nature and what are the burden and standard of proof required in elections disputes arising under the Act ?

The following ruling was then made by the Court :



For my part I think that the Representation of the People Act [CAP 146] is a mixed/hybrid nature Act having both criminal and civil characterisation in its provisions. The procedure is as merely as possible the same as that of an ordinary civil action, and the matters in issue need be proved only according to civil standard, on the balance of probabilities. Evidence which would be sufficient to justify a finding by a Judge of the Supreme Court hearing an election petition that a candidate had committed corrupt practices, for example, bribery would not necessarily be sufficient to support a conviction in criminal proceedings. The fact that on the hearings of an election petition a finding had been made that a candidate had been guilty of bribery would not have any relevance in criminal proceedings brought against that candidate in respect of the alleged bribery.

The above view is supported by the following provisions of the Representation of the People Act [CAP 146] :

By virtue of Section 54, the question of the validity of any election to Parliament, shall be heard by the Supreme Court by way of election Petition.

Section 54 says :

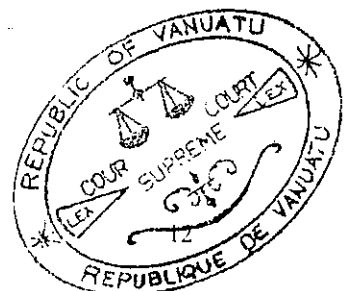
"54(1) The validity of any election to Parliament may be questioned by a Petition brought for that purpose under this Act and not otherwise.

(2) Every election Petition shall be heard by the Supreme Court." (emphasis added)

By section 64:

"64 The Supreme Court shall if in its opinion anyone has committed an offence of a corrupt practice in connection with an election to which a petition heard by it relates, send a written report in respect thereof to the Public Prosecutor."

And section 66 says:



"66 Any Court which convicts a person of an election offence shall inform the Electoral Commission and the Principal Electoral Officer."

The Representation of the People Act [CAP 146] makes a clear distinction between the hearing of an election petition by the Supreme Court and the hearing of a charge of an election offence by a Court. That distinction appeared clearly under section 68 of the Act.

Section 68(3); (4) says :

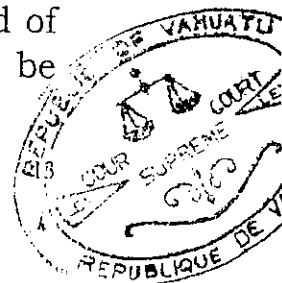
"68(3) The Supreme Court when hearing an election petition or a court trying an election offence may make an order that any document retained by the Electoral Commission or the Principal Electoral Officer shall be inspected, copied or produced... (emphasis added)

(4) No order shall be under inspection (3) unless the Court is satisfied that the inspection, copying, or production is essential for the hearing of a charge of an election offence or the hearing of an election petition. (emphasis added)

Therefore, when hearing an election petition, the Supreme Court applies the civil standard of proof, that is, proof on balance of probabilities. When hearing a charge of an election offence, the Court applies the criminal standard of proof, that is, proof on beyond reasonable doubt. That is what the Representation of the People Act [CAP 246] envisages in my view by its provisions.(emphasis added)

The Kiribati Court of Appeal judgment in Teiraoi Tetabea and Rutiano Benitoto v. Kabwenibeia yee - On and others (Civil Appeal No.2 of 1988) and the High Court of Kiribati judgment in Teatao Teannaki v. Teburoro Tito (Civil case No.30 of 1994) are in support of this view.

The judgment of the National Court of Papua New Guinea in Raymond Agonia v. Albert Karo and Electoral Commission., which was referred to this Court held that the standard of proof required in an election petition to establish a ground of bribery is the same as in a criminal court and must be



proved as it is constituted in the criminal code. That case has to be distinguished with the present case since it applies directly the criminal code.

I now proceed on to deal with the evidence.

VIII. THE EVIDENCE

- The hearing of the petition occupied 2 hearing days during which 6 witnesses gave evidence, 4 for the Petitioner and 2 for the second Respondent, the Electoral Commission.

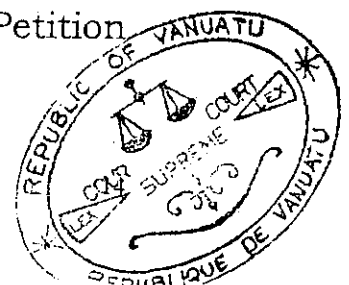
At the end of the hearing, the only ground of any substance is that contained in paragraph 14, particulars B and C of the Petition.

The allegation of discrepancy of Electoral Records in breach of Part X of the Act contained in the First ground and the allegation of breach of section 16 of the Act, that is that the electoral list for the Constituency of the Island of Maewo was not made available for inspection by the public during the immediately preceding calendar year for a period of not less than 14 days which period ended on 15 June 1997, contained in the second ground, both, made against the Second Respondent, the Electoral Commission are not supported by any evidence at all, and as the Petitioner's counsel, Mr Mark Hurley, himself conceded to that effect during his final submissions on behalf of the Petitioner, I accordingly find that grounds 1 and 2 of the Petition have not been proved.

The only remaining ground relied upon by the Petitioner is the third ground - breaches of sections 45 and 46 of the Act. That ground is contained in paragraph 14 of the Petition with particulars A, B & C.

The Petitioner adduces no evidence in respect to particular A of the third ground. I accordingly find that particular A has not been proved.

That leaves to be considered only particulars B & C of the third ground contained in paragraph 14 of the Petition which alleges :



"14. The First Respondent breached sections 45 and 46 of the Act by directly and/or indirectly making gifts or procurements to persons in order to induce such persons to procure, or endeavour to procure and/or for the purpose of corruptly influencing such persons to vote for the First Respondent.

PARTICULARS

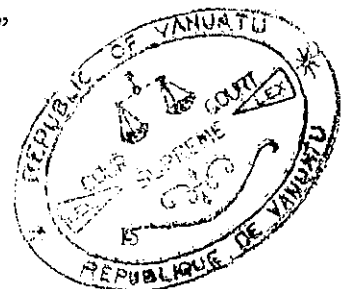
- B. In further breach of sections 45 and 46 of the Act, 2 voters, namely, Francis Williams and Ambrose Toa observed the First Respondent and his supporters on or about 26 February 1998 presenting gifts in the form of 2 local mats to Chief Gabriel Boe and his villagers purportedly to induce them to vote for the First Respondent.
- C. In further breach of sections 45 and 46 of the Act, one John Grimton of Kerepei village, Maewo observed a custom ceremony take place at Kerepei village on 4 March 1998 at approximately 3.45pm. At the said custom ceremony, a UMP Leader gave a custom mat to the First Respondent."

I now turn to consider the evidence of the Petitioner relating to the third ground. What follow is a summary of that evidence.

First witness : Hallington Wesley - 20 years

He is from Kerepei village, Maewo - He gave evidence that on 4th of March 1998, he was in his village and at 3.45pm, he attended at a NUP rally, he saw the President of Penama Province, Ham Lini. He is affiliated with NUP. He saw Paul Ren and he identified as the First Respondent and he said he saw Silas. He gave evidence that he saw Silas gave a custom mat to Paul Ren toward the middle of the rally and Mr Silas said :

"A. Hemi givim mat bae UMP voters oli vot long NUP."



He was asked if he heard any people giving any speeches. He said no. Mr Ham Lini just said thank you. He said nothing else. He was then asked :

“Q. Did you hear what Silas said at the time he gave Paul Tari a mat ?”

A. “No.”

He gave also evidence that he did not hear what Paul Ren said. He said at 6pm o'clock they had a party- A B.Q. - and there were lots of people present at the time.

Under cross-examination, he remembered an event on 4 March 1998, a political rally. He said 80 people live in his village. Some of the people of his village are not there at that time. He mentioned about “midium” the number of people from his village present at that time. He knew Paul Ren Tari since he was a child. Paul Ren Tari was from a nearby village and there are also people from Paul Ren's village who attended the event. There are a mixture of people from the 2 villages. There is no other political rally around this time. He was also asked :

Q. “Any other party there ?”

A. “yes.”

Q. “Which one ?”

A. “Vanuaaku Party hemi stap.”

Q. “Same time ?”

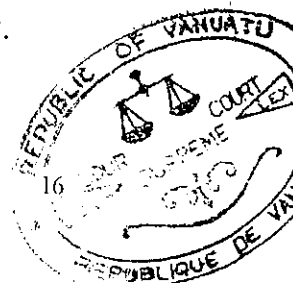
A. “Yes, same time too.”

He heard a speech from Silas and he did not remember any other speeches. He was then asked :

Q. “Anyone from Vanuaaku Party there ?”

A. “No.”

He gave evidence that he did not have a good recollection of what happened on that day. He saw a mat given. He said Silas from a village in the South far from his village hold a mat and gave it to Paul Ren Tari. He described the mat as a white mat made of pandanus leave. He repeated he saw Silas gave the mat to Paul Ren Tari. He said there was a party. B.Q. and people ate together at the end of that day.



He said he did not talk to anybody about voting. Nobody talk to him about voting and he did not remember a conversation on that day about voting.

Second witness : John Grimton, age 15.

- He is the younger brother of the first witness and lives at Kerepei village. He gave evidence to the effect that he
- remembered he was in his village on 4th March 1998. At about 3.45pm, he saw Silas hold a mat and gave it to Paul Ren. People from his village and other villages were there. There were 80 people. He recognised his brother Hallington Wisley, Silas, a UMP member, Ham Lini, President of Penama Province affiliated with NUP. He saw Silas gave a mat to Paul Ren. He identified Paul Ren as the first Respondent and he is from NUP. He gave evidence that after Silas gave the mat to Paul Ren, Silas said :

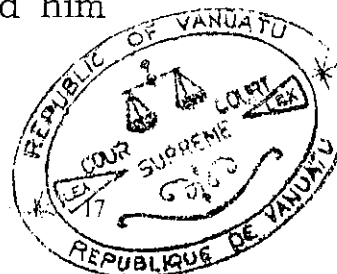
“Hemi givim mat blong UMP go together wetem NUP.”

Paul Ren said nothing at that time. Ham Lini said nothing. Then people ate together. They ate taro, meat “buluk” (cattle). He gave evidence there were 80 people who attended the event. People from other villages leaved Kerepei at 6pm o'clock.

Under cross-examination, he remembered there were some people in his village on 4 March 1998. He said he had a clear memory. He gave evidence that his father is from NUP and he did talk politics with his father. He knew Silas, he is from Nasawa.

Paul Ren come from Betarara village. He knew him for quite some time already. He said there were 80 people at that time he counted them and 49 people live in his village.

He saw Silas gave a mat to Paul Ren Tari. He described the mat, it looks like a hairy mat. He did not hear anything Paul Ren said that afternoon. He saw people ate and drunk kava. He said people used to drink kava. He said there is no people from Vanuaaku party (V.P.) and his father told him after the rally.



He did not talk to anybody that afternoon about voting. He was then asked:

Q. "Anybody else talking about voting?"

A. "Yes. My father, Paul Ren, Leangas."

Q. "Did you hear people talking about voting that day?"

A. "Yes."

Q. "You remember clearly?"

A. "No."

Q. "You remember anybody talking about voting on that day?"

A. "No."

Q. "Do you know what voting means?"

A. "No."

Q. "You don't know?"

A. "Yes."

When he was re-examined he said he saw Silas in his village before but he never saw him giving a mat to Paul Ren. He said he saw 80 people, men and women attended the event from 3.45 pm to 6.00pm. He did not know which political parties these people vote for.

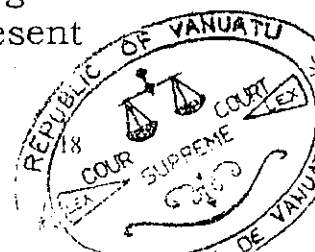
Third witness : Ambrose Toa, age 24.

He is from Naviso village and a registered voter. He gave evidence to the effect that on 26 February 1998, he saw Paul Ren performing a custom ceremony in his village, Naviso. He recognised Paul Ren and identified as the First Respondent. He knew Paul Ren for quite a long ago. He belongs to NUP. On 26 February 1998, he said he saw Paul Ren performing a custom ceremony in respect to two (2) men, Chief Norman and Chief Gabriel, both from Naviso village.

He saw Paul Ren making speeches to the following effect :

"Hemi givim tufala mat blong makem se face blong youmi I come gud bagegen between youmi." [He gave the two (2) mats to clear our face].

He saw Paul Ren washing his face and gave the two (2) mats to Chief Gabriel. Paul Ren did not say anything. He gave evidence that after the custom ceremony Paul Ren made his electoral campaign. There are about 200 people living in Naviso village and about 50 people from Naviso were present



when Paul Ren gave the 2 mats and during the electoral campaign. He said he did not remember what Paul Ren said in his electoral campaign. He said Paul Ren talked in his mother tongue.

Under cross-examination, this witness confirmed he is a registered voter. He is a member of Melanesian Progressive Party (MPP). He joined MPP in 1986 -1987 and he is still affiliated to that political party.

He said people from Naviso village are not affiliated to the same political party. There is a mixture. There was no other party groups holding meetings in the village on that day. People come from different villages to attend the political meetings. He knew Paul Ren long ago when he was a police man. He saw him often and Paul Ren has family members living in Naviso village. The following questions and answers were recorded :

Q: "You say in February 1998 you saw Paul Ren doing a custom ceremony."

A: "Yes."

Q. "What do you mean about custom ceremony?"

A. "Peace ceremony long tufala man."

Q. "How you know that?"

A. "Mi save because hemi makem peace. Mo hemi talem se hemia hemi peace ceremony."

Q. "Anyone else says this is a peace ceremony?"

A. "Yes."

Q. "Do you understand the meaning of peace ceremony?"

A. "Yes blong maken youmi come one. Village blong youmi bae i become one."

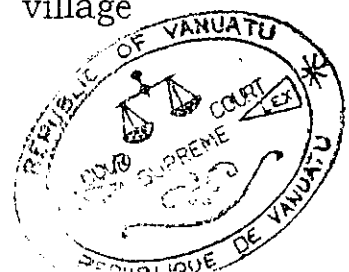
Q. "A peace ceremony is to make peace - bring the village together?"

A. "Yes."

Q. "Is there any need to have peace?"

A. "Yes. Hemi makem peace. Mifala blong village blong Naviso mo narafala village Nawota mifala i row. So mifala I go long miting."

This witness gave evidence about a fight between the young people from his village Naviso and those of another village Nawota. During the fight, one person from Nawata village was seriously injured.



He gave evidence about the involvement of Paul Ren Tari in the meeting to resolve the dispute between the young people of the 2 villages to the effect that Paul Ren work for World Vision as a judge and he did impose fine penalty on the young people from Naviso village. No fine penalty was imposed on the young people from Nawata village. He said he felt Paul Ren Tari favoured the other party by imposing fine on the young people of Naviso and none on the young people from Nawata village. He was also asked :

Q. "Is the ceremony about that ?"

A. "Yes."

Q. "To forget so that the 2 villages could live in peace ?"

A. "Yes."

He gave evidence that he saw the 2 mats given to Chief Gabriel by Paul Ren Tari is for the peace ceremony.

He gave also evidence that he saw the 2 mats which were given to Chief Gabriel by Paul Ren, were given to Paul Ren by Chief Norman from Naviso village.

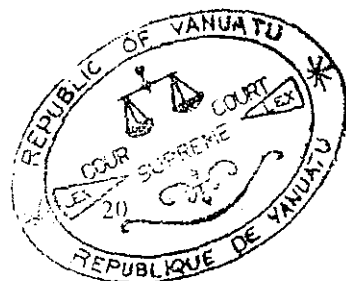
He said during that time, he did not talk to anyone about voting, nor anyone talked to him about voting, and no one else talked about voting.

He knew Paul Ren was a candidate in the election and he was also a candidate during Provincial Government Elections in 1995. He knew Paul Ren had interest in politics.

When he was re-examined, he said he remembered the fight took place on October 19, 1997. He was sure because he was himself involved in the fight and he had a clear recollection about the fight. He confirmed Paul Ren did not talk about voting. He said Paul Ren talked about politics in his electoral campaign. He was then asked :

Q. "What did he say?"

A. "Hemi talem se from hemi candidate, hemi talk- youmi lukluk gud, scalem gud man- lukluk gud wea nao road blong youmi followem."



This was the last witness for the Petitioner, whose case was then closed.

As I have mentioned earlier on, the First Respondent adduces no evidence in rebuttal. That constitutes the end of the First Respondent's case.

CONCLUSIONS

(i) Discussions of the evidence

I have heard a great deal of evidence on the allegations of bribery against the first Respondent occurring on two (2) separate occasions, respectively on 4 March 1998 and 26 February 1998 in Kerepei village on the Island of Maewo. In my view, the evidence of the witness Hallington Wisley is full of inconsistencies and contractions. I have carefully observed his demeanour and behaviour in the witness box. He is not a witness of credit worthy. As he said in his evidence under cross-examination, he did not have clear recollection about what took place. His recollection is vague. For these reasons, his evidence will be disregarded.

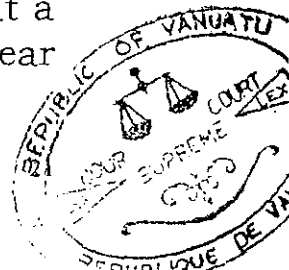
(a) Event occurring on 4 March 1998 in Kerepei village- Maewo

The evidence of the witness John Grimton is more clearer as both counsels of the Petitioner and First Respondent acknowledged and concurred in their submissions.

The evidence of this witness establish that on 4 march 1998, he was in his home village, Kerepei. At 3.45pm, a political rally took place. 80 people from various villages were present. He identified the political leaders present at the time. Silas, a UMP member, Ham Lini, the President of Penama Province, he is affiliated to NUP and the First Respondent, a NUP member. His evidence establish that the First Respondent received a custom mat from Silas who said words to the following effect :

"It is good to get together with NUP."

The event took place until 6.00pm. People had a .B.Q. eat a "buluk" (cattle) and drink kava. This witness had a clear



recollection of what happened on that day. His father is a member of NUP and he talks politics with his father at home. He also gave a detailed description of the mat given to the First Respondent by Silas. There is no people affiliated to Vanuaaku Pati (V.P.) there.

- He never saw Silas gave a mat to the First Respondent before in his village and he did not know how they would vote. This witness is a credible witness.

(b) Event occurring on 26 February 1998 in Naviso village - Maewo

The evidence of witness Ambrose Toa establish that on 26 February in the village of Naviso, he saw a custom ceremony taking place. The First Respondent was present on that occasion. He identified three (3) persons involved in the custom ceremony as being :

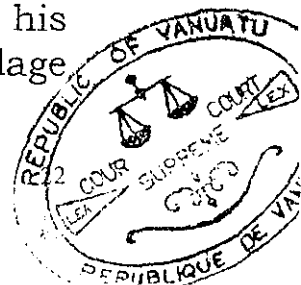
- the First Respondent, Paul Ren Tari ;
- Chief Norman ;
- Chief Gabriel.

His evidence is that he saw the First Respondent gave two (2) custom mats to Chief Gabriel. This is to clear their face between their villages. He said he heard the electoral campaign of the First Respondent. 50 people were present.

He is a member of Melanesian Progressive Party (MPP). He joined MPP since 1986-87 and he is still a member of that political party. People of his village, have different political views.

His evidence establish also that the purpose of performing the custom ceremony is to make peace between Naviso village and Nawata village. There is need to have peace ceremony between the 2 villages because the young people of the 2 villages had a fight in 19 October 1997 and a person from Nasawa village was seriously injured.

In order to resolve the row between the 2 villages, the First Respondent acted as a judge after the fight and gave his decision imposing a fine to the young people of Naviso village



but no fine was imposed on the young people of Nawata village. The witness expressed his feeling that the first Respondent had favoured the other village.

His evidence is also that Chief Norman had first gave the two (2) custom mats to the First Respondent and the First Respondent handed over to Chief Gabriel.

- He knew the First Respondent was a candidate in the election, standing as a candidate for the first time and that he knew he has interests in politics for sometimes.

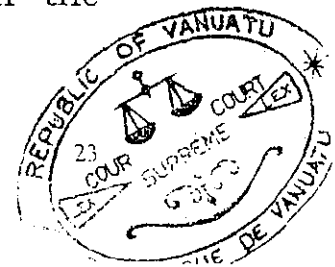
He said the First Respondent made a speech to the effect that people must be careful to see the road to follow.

This witness also is a credit worthy witness.

(ii) Is a custom mat received or given in a custom ceremony, a gift or forming an integral part and parcel of the custom ceremony?

The evidence establish that on 4 March 1998, the First Respondent received a custom mat from Silas and that on 24 February 1998, the First Respondent was given two (2) mats by Chief Norman and he then offered them to Chief Gabriel.

As far as I can ascertain, when a custom ceremony is performed, the custom mat exchanged, for the purposes of the ceremony is an integral part and parcel of the custom ceremony. The custom mat offered in the custom ceremony cannot be dissociated from the custom ceremony itself, if so, then it is not a custom ceremony and it is meaningless. The custom mat which is sometimes described as a "custom gift" is not a gift in the literal sense. Therefore, where the custom mat, is offered in a custom ceremony, it is not a gift. For my part, I think, given the nature of custom, it is more appropriately described as an offering. It is common ground that in this Republic, and judicial notice can be taken of it, the performance of custom ceremonies is part of everyday life of the people. It is the way of life of the people in this country since time immemorial. This is reflected in the evidence before this Court.



Witness Ambrose Toa testifies that, the First Respondent performed a custom ceremony during which he offered two (2) custom mats to Chief Gabriel on 26 February 1998 in order to bring peace with the young people of Naviso village and those of Nawata village after they had a fight on 19 October 1997.

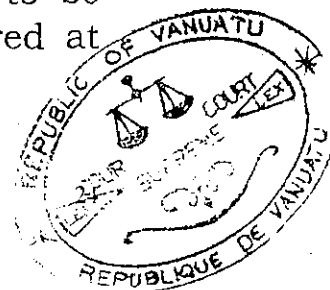
- Witness John Grimton testifies that, the first Respondent received a custom mat from Chief Silas during a custom ceremony and Silas said words to the following effect :
"It is good to get together with NUP." The purpose of the custom ceremony is to seal the two (2) parties together during the electoral campaign.

(iii) Custom ceremony and the law

It is true to say that in some countries handing over a mat at meetings on the eve of a n election would lead to an irresistible inference that the candidate did it to attract votes. Counsel for the Petitioner pointed out that it is one thing to have political rally and it is quite another thing to embark upon custom ceremony with custom gift (such as the mats) 2 days before the elections in the presence of 80 people. He submitted that the mat given by Silas to the first Respondent endeavour to procure the election of the first Respondent for the vote of any voter namely people who have been present.

It should be remembered that Western countries do not have any parallel situation to Vanuatu at election time when the question of performance of custom ceremonies arises.

What the Representation of the People Act [CAP 146] forbids are corrupt practices, not compliance or performance of custom ceremonies. A genuine intention to perform a custom ceremony is not an intention to induce electors to vote or procure the election of a candidate and is not contrary to election laws. There is no law in Vanuatu which requires custom to be suspended at election time. A custom either exists or it does not. If it exists then it ought to be respected at all times. Any custom that can be ignored at will is meaningless.



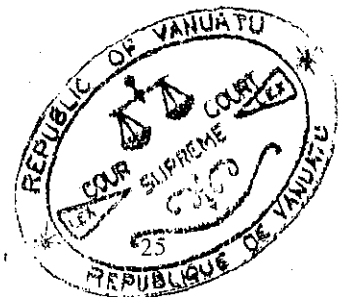
In the preamble to the Constitution -the Supreme Law of Vanuatu- it can be understood that one of the foundations upon which the United and Free Republic of Vanuatu is rooted/established is : Traditional Melanesian Values...

By virtue of Article 47(1) of the Constitution, the Administration of Justice is vested in the judiciary, who are subject only to the Constitution and the law. The function of the judiciary is to resolve proceedings according to law and law includes custom and Article 95(3) says that custom shall continue to have effect as part of the laws of the Republic of Vanuatu.

It is clear from the lessons of history that the price to be paid for failure to cherish and uphold the customs and traditions of Vanuatu, is a heavy one : the loss forever of a national identity and way of life.

The Representation of the People's Act [CAP 146] does not present an obstacle to the showing of due respect for custom. The two are not inconsistent. A candidate in an election cannot be found guilty of a corrupt practice if his only intention was to perform custom ceremonies. No inference of a corrupt intention ought to be drawn solely because a candidate received or offers custom mat in a custom ceremony.

On the other hand, suspicious as to his motives would naturally be aroused if he distributes an excessive amount to the people, or gives money or quantities of goods other than the customary mat, or if his presentation is not in accordance with custom in some other respect. In those circumstances he may well find himself in the position of having to rebut an inference that his real intention was to corruptly influence the voters. But where a candidate presents a mat in a custom ceremony and in the customary manner, there is no reason why this alone should foster the inference of a corrupt intention or cause his political opponents to go running to the Courts.



In the present case, there is no great issue about the facts in this matter. The only dispute is what evidence amounts to bribery.

(iv) The First Respondent's intention

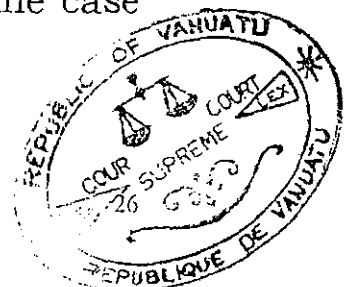
The onus is on the Petitioner to prove that the First Respondent had a corrupt intention when he received a custom mat from Silas or he offered 2 custom mats to Chief Gabriel of Naviso village.

Taking the hybrid nature of the Representation of the People Act [CAP146] containing both criminal and civil characterisation in its provisions, the corrupt intention has to be clearly proved by the Petitioner. There ought to be clear proof of corrupt intention first, before any inference can be drawn from a no case submission on the part of the Respondent. It is the intention behind the performance of custom ceremony during which the custom mats were given/received that is important. If the Respondent had given large quantities of mats, or of other goods or money had been given, then there would be a strong inference that he intended to induce the people to vote for him.

Counsel for the Petitioner submits that in the absence of any evidence made by the First Respondent, because it has been unanswered, the Court is entitled to take the evidence at his highest. Following *Jones v. Dunkel* (AUst.H.C.) (1959) 101 C.L.R. 298 and *Ferrieux v. Banque Indosuez* V.L.R. 2, in which Chief Justice Cook, held that :

“Normal adverse inference against a party not calling a witness who would otherwise have been expected to give evidence in its favour should be applied here.”

This line of authority must be rejected because in the type of cases as the present one before the Court due to the hybrid nature both criminal and civil characterisation of the provisions of the Representation of the People Act [CAP 146]. In any event, corrupt intention ought to be clearly proved by the Petitioner to discharge his burden which is not the case here.



The case of Rowell v. Lartel (1986) 6 NSWLR 21 must be distinguished also.

(v) Application of the law to the facts of the case

Section 45(1)(a)(iii) provides :

"45(1) A person commits the offence of bribery-

(a) if he directly or indirectly by himself or by other person -

(iii) makes any such gift or procurement to or for any person in order to induce that person to procure, or endeavour to procure, the election of any candidate or the vote of any voter ;

or if upon or in consequence of any such gift or procurement he procures or engages, promises or endeavours to procure the election of any candidate or the vote of any voter ;..." (emphasis added)

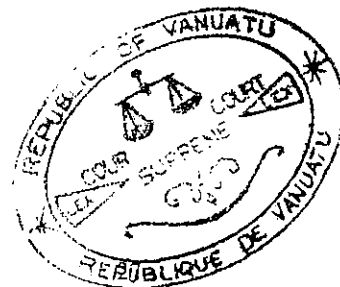
By perusing the language of... any voter ;" is directed to the candidate himself.

EVENTS OF 4 MARCH 1998

Applied to the facts relating to the event of 4 March 1998, the evidence is that the first Respondent against whom allegations of bribery were made, received a custom mat from Silas. The first Respondent is the recipient of the gift but he is not giving any gift to anyone .This is not what section 45(1)(a)(iii) contemplates. The allegations of bribery in respect to the event of 4 March 1998 are not proved.

Section 46 says :

"46 A person commits the offence of treating-



- (a) if he corruptly by himself or by any other person either before, during or after an election pays wholly or in part the expenses of giving or providing any food, drink or entertainment to or for any person-
- (i) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting ; or
- (ii) on account of that person or any other person having voted or refrained from voting or being about to vote or refrain from voting ;
- (b) if he corruptly accepts or takes food, drink or entertainment offered in the circumstances and for the purpose mentioned in paragraph (a) of this section."

Applied to the allegation of treating apart from the evidence that, at the end of the campaign they eat a buluk (cattle) and drunk kava, there is no evidence that the first Respondent provides, gives or pays the Buluk (cattle), food or kava.

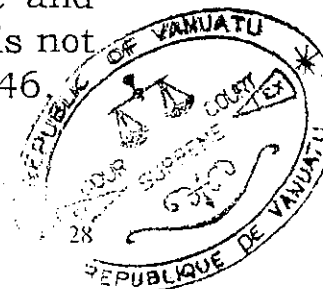
Further there is no evidence that he accepts to eat buluk (cattle), drunk kava for a corrupt purpose.

Allegations of treating under section 46 of the Act is not proved.

Particular C of the third ground of the Petition is hereby dismissed.

EVENTS OF 26 FEBRUARY 1998

As far as the event of 26 February 1998 is concerned, the evidence is that on that day a custom ceremony was performed. Chief Norman gave 2 custom mats to the first Respondent and he in turn handed over them to Chief Gabriel of Naviso. The purpose for performing the custom ceremony is to bring the peace between Naviso village and Nawata village on the island of Maewo. In any event, it is not contrary to the Representations of the People Act CAP 146.



It is true that in order to prove an intention to bribe it is not necessary to prove that the people were actually influenced. Nevertheless, if a voter does not vote for the Respondent who is alleged to have influenced him, that is evidence that the voter was not influenced.

In this case, witness Ambrose Toa's evidence is that he is a member of MPP and he is affiliated to that political party since 1986-87 and is still member of that political party. Bearing in mind of the provision of section 65 of the Act, requiring not to reveal his vote, it is common sense to understand that witness Ambrose Toa, a member of MPP, is not influenced by the First Respondent.

The allegations of bribery contained in particulars B, paragraph 14 of the third ground of the Petition are not proved against the First Respondent. The third ground of the Petition contained in paragraph 14 of the Petition, is, therefore, dismissed.

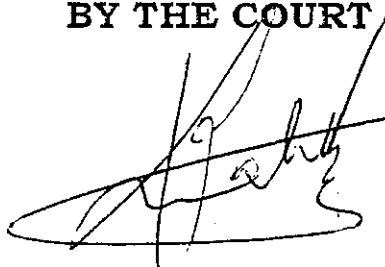
The Petition fails. The election of the First Respondent is confirmed and a certificate that the First Respondent was duly elected as Member of Parliament of the Constituency of Maewo, will be sent to the Petitioner and the Second Respondent, the Electoral Commission forthwith.

The Petitioner is ordered to pay the costs of the First and Second Respondents as agreed or taxed.

DATED at PORT-VILA, this 28 AUGUST 1998

Place of delivery : PORT-VILA

BY THE COURT



.....
Vincent LUNABEK J
Acting Chief Justice

