

(Civil Jurisdiction)

BETWEEN: HON. SILAS CHARLES HAKWA
Petitioner

AND: HON. DONALD KALPOKAS
MASIKEVANUA
Respondent

Petitioner in person
Mr. George Nakou for the Respondent

JUDGMENT

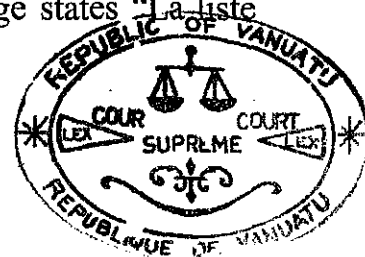
This is a petition for a declaration that the life of the current Parliament expires at midnight tonight, 6th March 2002. Prerogative writs to that effect have been sought. Application is made for the various time requirements to be abridged. There is no objection and I do so.

The petitioner, himself a Member of Parliament, says quite simply that this Parliament was elected on 6th March 1998. Therefore under Article 28 (1) of the Constitution its life expires on 6th March 2002 at midnight (with 7th March).

Article 28 (1) states "Parliament, unless sooner dissolved under paragraph (2) or (3), shall continue for 4 years from the date of its election".

The results of the general election in 1998 were gazetted on 16 March 1998. By a notice dated 18th March the first sitting was set for 30th March 1998.

By a Notice dated 18th February 2002, in accordance with the summons of the Honourable Speaker of 14th February, (the English version reads 18 March, but that is clearly a typing error for 18 February) the Clerk of Parliament has summoned Parliament to meet on 7th March at 8.30am. "The matter to be discussed... shall only be the study of Bills and Report that are listed in the Annexure to this Notice." The Notice in the French language states "La liste



des affaires à traiter ... comprendra l' études des Projets de loi et de Rapport figurant en Annex à cet Avis", otherwise the Notices are the same. The list refers to the Report of the Constitutional Review Committee and five Bills.

The petitioner argues that "the date of its election" can have no other meaning than the date the election was held. Further it gives certainty. Anything else introduces an element of uncertainty. He states that Schedule 5 Rule 21 of the Representation of the People Act (Cap 146) relates purely to the mechanics of ascertaining who the winning candidates are and declaring such.

Standing Orders of Parliament might provide for a calling of Parliament, but they cannot override the clear provisions of the Constitution.

The petitioner gave this Court a variety of definitions of 'election' from various sources.

Osborne's Law Dictionary states "The process of choosing members of Parliament by votes of the electorate"

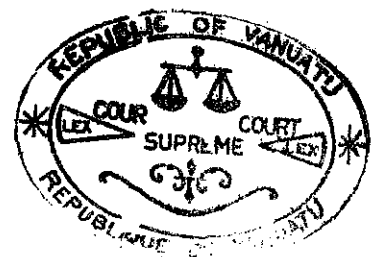
The Collins, Webster and Oxford dictionaries state " To choose by vote"

The respondent opposed the petition. He argued that 'election' is a process. It begins with a polling day but concludes when the names of the successful candidates are announced. In other words the current Parliament's life does not expire until midnight on 16-17 March.

The respondent questioned the bona fides of leaving this application to the last moment when the Notices were issued on 18th February and the summons of the Honourable Speaker was given on 14 February. A defence and affidavit of the Clerk of Parliament were handed to the Court. Although not sworn and filed I have taken them fully into account against an undertaking to have that done.

The respondent cited various provisions of the Representation of the People Act and the Standing Orders of Parliament. It was argued for them to have real meaning and effect, election must be a process which can only conclude when the successful candidates are known.

Both parties argued for and against their positions by use of words and provisions in the Representation of the People Act. Neither party was able to cite any authority to assist the Court. It would appear that no Parliament has previously run its full term to four years, so there is no precedent to look to.



The petitioner and respondent agree it is a matter of interpretation of Article 28 (1). The respondent argued that "its" election must refer to the time when the election has been completed.

The respondent also said it was important to note that s28 (1) uses the word "election", whereas Articles 28 (4) and (5) use the words "general election". No-one can say 'I am an M.P.' until the results have been announced. Allowances commence at that date. Therefore if no candidate can say I am an M.P. then it cannot be said Parliament has been elected.

The petitioner replied that some of the respondent arguments helped him. He said there was certainty. The Constitution was supreme and the words were clear.

What is the correct interpretation of Article 28 (1)?

Election is defined in the Shorter Oxford Dictionary as "The action of choosing for an office, dignity or position usually by vote".

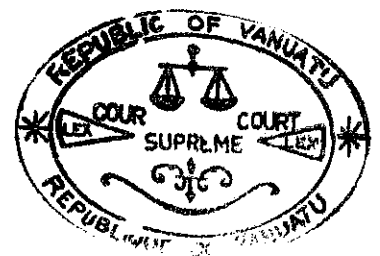
There is no definition in the Constitution. I do not find the use of 'election' in sub- Article (1) and 'general election' in sub article (4) and (5) give assistance. Election in sub-article 1 is referring to a general election.

I do not find the use of the word "commencement of an election" in section 21 of the Representation of the People Act assists. The section reads "... polling day shall be a day fixed for an election or commencement of an election". If anything the words tend to suggest the polling day is the day fixed for the election, or the start of two or three days for the election.

Article 105 of the Constitution of Papua New Guinea states "a general election shall be held within the period of 3 months before the 5th anniversary of the day fixed for the return of the writs for the previous general election."

s17 Constitution Act 1986 of New Zealand states "unless sooner dissolved", the life of Parliament is "three years from the day fixed for the return of the Writs issued for the last proceeding general election".

s8 (3) Constitution Act 1975 of the State of Victoria Australia states "a period of three years has elapsed since the day of its first meeting after a general election".



The provisions of other State Parliaments in Australia use similar ways to fix the commencement of the period. Whilst such specific provisions are consistent with the respondent's argument, there is no such provision in the Constitution or any Act of Vanuatu.

There is nothing in the surrounding Articles of Vanuatu's Constitution to give guidance. ?

The question must be raised, why take the date of gazetting of the names of successful candidates as the datum point. Is the election process only complete when members have taken the Oaths and signed the Rolls? Or when all election petitions have been heard and adjudicated upon? The particular Parliament cannot exist until the new M.P.s are sworn in and have signed the Roll. The Article says date of 'its' election and not the date of the election of its members.

This is some of the uncertainty which must flow from the respondent's argument.

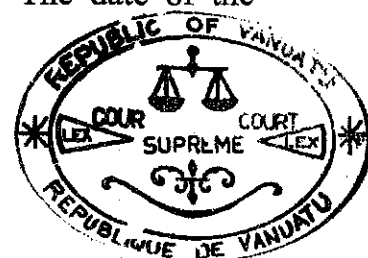
One might ask an M.P., when were you elected. Almost certainly he will say the date of the Polls and not the date of announcement of the result. ?

It can be argued that if the framers of the Constitution had intended a provision like those in Papua New Guinea or the States of Australia or New Zealand then that is what they would have put in the Constitution.

The starting point is obviously the Constitution. It is the supreme law of the Republic of Vanuatu.

The Election Commission has the general responsibility for and supervises the registration of electors and the conduct of elections to Parliament, National Council of Chiefs, local government and municipal councils. Its powers and functions are prescribed by Parliament. I cannot find that its activities or governing laws can specifically define what an election is for the purposes of Article 28(1).

In my judgment the words of the Constitution are clear. There is no provision in the Constitution or any Act to expand or modify them. The date of the election of this current Parliament was 6th March 1998.



That, in my opinion, is how any ordinary person would understand the words. To expand the meaning of the word 'election' here is unnecessary and introduces uncertainty because it cannot be specifically stated which event would mark the end of the "election process" of a Parliament.

If those who wrote the Constitution intended some other way to calculate the starting date of the life of a Parliament it was open to them to state the same in the Constitution, as has happened in Papua New Guinea and other places.

I realise that this might cause very tight timetables for the Standing Orders of Parliament and other provisions. However, it is they that must be modified to be consistent with the Constitution, not an interpretation forced upon the Constitution to make it consistent with them.

I cannot find the provisions of Schedule 5 Rule 21 alter that. The words "the candidates who obtains the highest number of votes in order of the votes obtained that equals the number of seats allocated to that constituency shall be declared elected" can be said to be a declaration of what has happened, namely he was elected on polling day and that fact is being declared. Such interpretational inferences should not, however influence what in my judgment are the clear words of the Constitution.

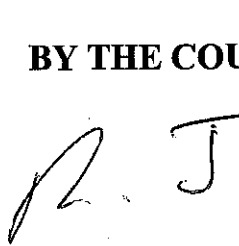
In normal interpretation, year means calendar year and commences at midnight at the end of the day of the event concerned.

Accordingly I must formally declare that the life of the current Parliament expires at midnight from 6th – 7th March 2002.

There will be no Order for costs.

DATED AT PORT VILA, this 06th Day of March 2002

BY THE COURT


R. J. COVENTRY
Judge

