

**BETWEEN:** DANIEL BULE AND ALICKSON FRANK VIRE  
First Applicants

**AND:** PHILIP ESAU  
Second Applicant

**AND:** THE REPUBLIC OF VANUATU  
Respondent

**Coram:** Chief Justice Vincent Lunabek

**Counsel:** Messrs James Tari and Robin Tom Kapapa, counsel for the Applicants  
Messrs Frederick Gilu and Allan Obed of State Law Office (SLO) Counsel for  
the Respondent

## **REASONS FOR STRIKING OUT URGENT CONSTITUTIONAL APPLICATION**

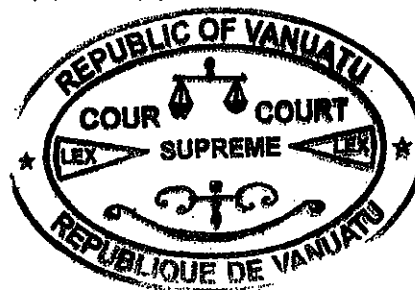
Before me is an Urgent Constitutional Application dated and filed 19 October 2009. The application is filed with a sworn statement of Urgency of Daniel Bule and other sworn statements of Philimon Esau and Alickson Frank Vira in support.

Both counsel and the parties agree for the Court to deal with the application as a matter of urgency in the circumstance of the constitutional complaint. Relevant parts of the Constitution Application Rules 2003 are abridged.

A First Conference in accordance with Rule 2.8 of the Constitutional Rules is held.

The Applicants through counsel inform the Court that they file their Urgent Constitutional Application and seek for the following:

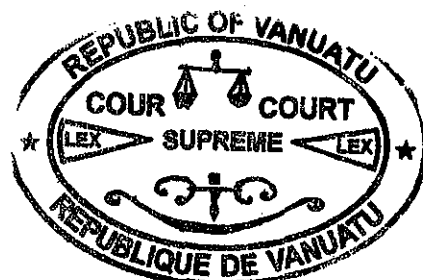
1. The enforcement of their fundamental rights prescribed by Article 4(2), 5(i) (g) (k) of the Constitution pursuant to Article 6(1) and (2) of the Constitution.
2. Relief pursuant to the provision of Article 53(1) and (2) of the Constitution.



They further say that the Respondent has acted in breach of Article 4(2), 5(i) (g) (k) of the Constitution so they apply for the following orders, declarations, remedy or relief:

3. A declaration that the purported of the Respondent to stop the First Applicants from contesting the Port-Vila Municipal Election is invalid, void and of no effect.
4. A declaration that the purported decision of the Respondent to stop the Second Applicant to vote on the 5<sup>th</sup> of November 2009 Port-Vila Municipal Election is invalid, void and of not effect.
5. A mandatory order directing the Respondent to hold and allow voting to registered voters of the polling stations of Vila City College, Beverly Hills and NTM.
6. A declaration that the purported decision of the Respondent of the 8<sup>th</sup> and 9<sup>th</sup> October 2009 is ultra vires, intra-vices the powers to refrain and stop the registered voters from exercising their fundamental rights and rights guarantee by law and to vote on the 5<sup>th</sup> November 2009 a the Port Vila Municipal Election.
7. A declaration that the purported decision of the Respondent 8<sup>th</sup> and 9<sup>th</sup> October 2009 is inoperative and inconsistent and contrary with the Representation of the People's Act [CAP.146].
8. Costs of and incidental to this application.
9. Such further or other Orders, relief or remedy as the Court shall think fit.

The grounds of the Urgent Application are contained in the application itself. At the conference, counsel for the Respondent informs the Court that the Respondent opposes the Urgent Constitutional Application on the basis that it is misconceived and that neither do the Application or sworn statements filed in support disclose an infringement of the Applicants' rights prescribed under Articles 5(1)(g), (i) and (k) of the Constitution.



The Court is informed that the Port-Vila Municipal Council elections will be held on 5 November 2009. That is within 15 days. It becomes Urgent to hear and determine the constitutional complaint as a matter of urgency.

The Court proceeds to hear the Constitutional Application as a matter of urgency. The facts are not disputed. They are summarised as follows:

It is common ground that the Port-Vila Municipal Elections will be held on 5 November 2009. On 8 October 2009, the Electoral Commission, as part of its general responsibility to supervise the registration of electors and the conduct of election to municipal councils, make a decision to the following effect: men and women who were registered to vote at:

1. Neil Ministry – NTM Polling Station
2. Beverly Hills Polling Station; and
3. Vila City College Polling Station

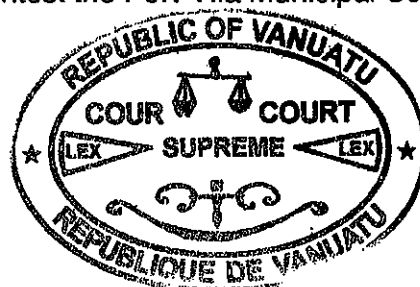
Cannot vote and cannot contest the Port-Vila Municipal Council Elections as candidates on 5<sup>th</sup> November 2009.

That decision has been published and communicated through urgent radio messages to the Presidents of all political parties, men and woman, who were registered to vote at the abovementioned polling stations on 8<sup>th</sup> and 9<sup>th</sup> October 2009.

On 19 October 2009, the Applicants filed their Urgent Constitutional Application. Applicant, Daniel Bule, resides at Beverly Hills area, Efate and the other two (2) Applicants, namely, Alickson Frank Vira and Philimon Esau, reside at Manples area, Efate.

The Applicants say each has a valid registered card to vote in Port-Vila Constituency as permitted by the Representation of the People's (Amendment) Act No.28 of 2007 [CAP.146].

They attach to their respective statements, copies of other registered voters cards who could not vote nor stand as candidates to contest the Port-Vila Municipal Council



elections of 5 November 2009 because of the decision of the Electoral Commission dated 8 October 2009.

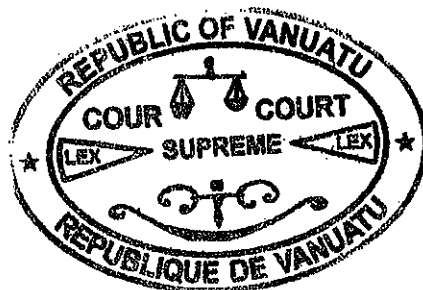
They say that their rights to vote in this coming municipal election were infringed. They specify that these rights are: freedom of expression, freedom of movement; and equal treatment under the law. They say that they cannot be denied their rights to express their opinion to participate and involve in the Municipal elections; to vote and choose a leader for tomorrow's future. They say there is no law that prevent them from voting.

They acknowledge and accept that Port-Vila Municipal Council has boundaries and wards. However, they say that such boundaries and wards do not stop them to have a valid registered card within Port-Vila Constituency and they used it to vote during Parliament elections at Port-Vila Constituency although, they reside outside the boundaries and wards of Port-Vila Municipal Council.

The Applicants through Counsel say that the following of their constitutional rights have been directly infringed by the Decision of the Electoral Commission of 8 October 2009:

- rights to vote under Article 4(2);
- Article 5(1):
  - . (d) protection of the law;
  - . (g) freedom of expression;
  - . (i) freedom of movement
  - . (k) equal treatment under the law or administrative action.

It is submitted on behalf of the Applicants that their rights have been infringed because the Respondent through their decision of 8 October 2009 prohibit them and over 4,000 registered voters in the Port-Vila Constituency to participate in the coming Port-Vila Municipal Council elections of 5 November 2009.



They say that by the impugned decision, they cannot exercise their rights guaranteed by the Constitution to vote, to express themselves freely, to choose to vote, contest the Municipal elections as candidates, take part, involve in, move within, part of the election. They seek the intervention of this Court to enforce the breaches of their fundamental rights of equal treatment provided to all registered voters who have validly register in the Port-Vila constituency.

It is submitted for the Applicants that there is no separate registration of voters for the National Parliamentary elections and the Port-Vila Municipal elections as all the Applicants have been registered to vote in Port-Vila area and hold valid card to vote.

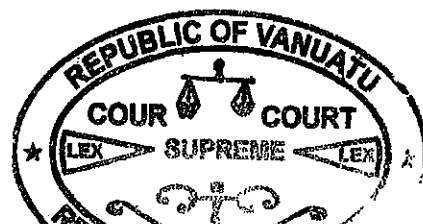
They further say that although the Municipalities Act [CAP.126] and its subsidiary legislations provide for the wards and the municipal boundaries, the Act does not provide that one has to live within the boundary of the Municipality in order to vote and to be registered and be eligible for Port-Vila Municipal elections. They say the Act is silent in this regard.

They finally say that the Representation of the People's (Amendment) No.28 of 2007 is applicable to Municipal elections and in this case, Port-Vila.

On 20 October 2008, after the Court hears submissions and arguments from the Applicants and the response from the Respondent, the Court finds and rules that the Urgent Constitutional Application is misconceived. It is struck out as there was no infringement of any constitutional rights by the decision of the Electoral Commission of 8 October 2009. The submissions made by counsel on behalf of the Applicants are rejected as baseless. The reasons are set out below:

Article 4(2) of the Constitution and the Representation of the People Act [CAP.146] ("the Representation Act") are relevant only to the registration of voters and election to Parliament. The Court accepts the submissions on behalf of the Respondent that they do not confer rights in relation to Municipal elections.

Article 4 is part of Chapter 1 of the Constitution which is headed "The State and Sovereignty". Further, it is located within a context which is clearly directed toward



National Sovereignty and therefore national elections. It would be perverse to read the requirements of Article 4(2) of the Constitution to require every other election of every other kind to comply with those requirements. Otherwise, it would be necessary to permit people who do not live, work (or have any other connection) within a Municipality to vote in the Municipal Council election.

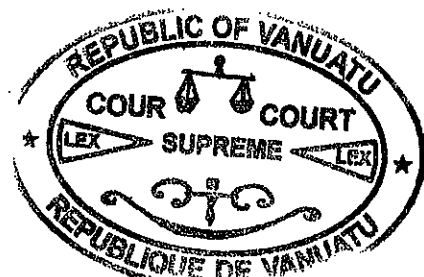
It is important to understand that it is within the Parliamentary competence to specify what nexus is required between voters and candidates on the one hand and a particular Municipality on the other.

The Municipalities Act [CAP.126] (the "Act") provides that the Minister may by Order declare any area to be a municipality; give a name to it; define the boundaries of any municipality and alter them; prescribe the composition of a council and the number of councillors; divide a municipality into territorial wards or vary them; prescribe the number of councillors in each ward etc... [Part 2 – Municipal Councils (ss.2-3-4) of the Act].

By Order 19 of 1980, Port-Vila Municipality (Delineation of Boundaries) Declaration was issued and the boundaries of the Port-Vila Municipality are delineated on the map annexed to this Declaration.

By Order 21 of 1980, Port-Vila Municipal (Composition of Council and Wards), the Port-Vila Municipal Council is composed of fourteen members elected under Section 7 of the Municipalities Act [CAP.126]. The Port-Vila Municipalities is divided into 4 wards. The names of the wards and the number of councillors representing each ward are as follows:

<u>Name of Ward</u>	<u>Number of Councillors</u>
(a) Malapoa – Tagabe	3
(b) Anabrou – Melcoffee – Tassariki	4
(c) Centre	4
(d) South	3



The Representation of the People's Act [CAP.146] provides for the electoral list.

(Part 5 Representation of the People's Act)

Those persons who are registered to vote (i.e. have their name included in the electoral list), but who reside outside of the boundaries and wards of the Port-Vila Municipal Council are permitted to vote in the Port-Vila Constituency. This is because the Representation of the People's Act only provides for the registration of voters and election to Parliament. Municipal Council elections are regulated by the Municipalities Act [CAP.126].

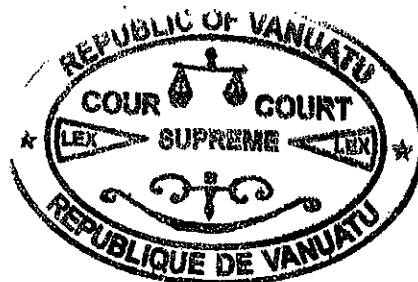
The Minister may by order provide for the regulation and conduct of elections to Municipal Councils. (Section 7(2) of the Municipalities Act).

Clause 3 of the Municipal Council Election (Procedures Rules) Order No.60 of 1982 provides that a person shall be eligible to stand as a candidate for election to a Municipal Council if he:

- (a) is a citizen of Vanuatu;
- (b) is registered as an elector in the Municipality in which he is a candidate;
- (c) is not disqualified from voting;
- (d) has not received a sentence including a suspended sentence of a term or terms of imprisonment which has not ended;
- (e) is not an undischarged bankrupt;
- (f) has attained 21 years of age. [Emphasis added]

Clause 2 of the Regulations for the Qualification, Disqualification and Registration of Electors Order No.10 of 2001 provides that a person is eligible for registration as an elector if he or she:

- (a) is a resident of a municipality; and
- (b) is citizen; and



(c) is or will be 18 years of age on or before 1 July of the year in which the electoral list of registered electors is being prepared. [Emphasis added].

By perusing the language of clause 3 of the Municipal Council Elections (Procedures Rules) Order No.60 of 1982 and clause 2 of the Regulations for Qualification, Disqualifications and Registration of Electors Order No.10 of 2001, it is clear that a person is eligible for registration as an elector if he or she is a resident of a Municipality (Port-Vila), is a citizen and is or will be 18 years of age on or before 1 July of the year in which the electoral list of registered electors is prepared.

A person who is registered to vote at a particular ward may stand as a candidate in another ward within the same Municipality. However, all of the criteria under clause 3 must be satisfied before a person may stand as a candidate in the Municipal Council elections.

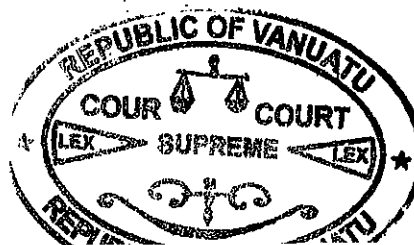
In Summary, men or woman who were registered to vote at:

1. Neil Ministry – NTM polling station
2. Beverly Hill Polling Station; and
3. Vila City College Polling Station

are permitted by the Representation of the People's (Amendment) Act [CAP.146] to so vote in those polling stations of Port-Vila Constituency for the purposes of Elections to Parliament. [Emphasis added].

However, men and women who were registered to vote (i.e. have their name included in the electoral list) but reside outside of the boundaries and wards of the Port-Vila Municipal Council are precluded to vote and stand for election at the Port-Vila Municipal Council. They do not satisfy all criteria under clauses 2 and 3 of the respective Municipal Regulations referred to above [Order No.60 of 1982 and Order No.10 of 2001]. This is the case for the Applicants and others who reside outside the boundaries and wards of the Port-Vila Municipal Council.

There is nothing to suggest that any of the actions of the Electoral Office are contrary to any of the provision of the Municipalities Act [CAP.126]. There was nothing in the Application nor sworn statements that discloses an infringement of the Applicants' fundamental rights prescribed by Article 5(1)(g), (i) and (k) of the Constitution.





## ORDER

1. The Urgent Constitutional Application filed 19<sup>th</sup> October 2009 is misconceived. It is hereby struck out as there is nothing to suggest that any of the actions of the Electoral Commission and Office are infringing any constitutional rights or are contrary to any provisions of the Act.
2. There is no order as to costs.

DATED at Port-Vila this 20<sup>th</sup> day of October 2008

BY THE COURT

Vincent LUNABEK  
Chief Justice

