

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

Judicial Review Case No. 29 of 2012

BETWEEN: DAVID ABEL
Claimant

AND: CHAIRMAN OF ELECTORAL COMMISSION
First Defendant

AND: PRINCIPAL ELECTORAL OFFICER
Second Defendant

**AND: RETURNING OFFICER FOR PORT VILA
CONSTITUENCY**
Third Defendant

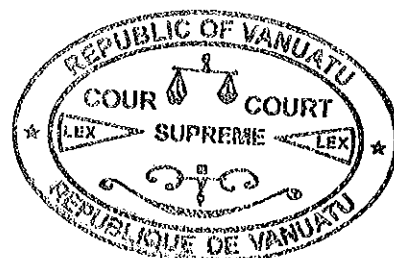
**AND: ATTORNEY GENERAL OF THE REPUBLIC OF
VANUATU**
Fourth Defendant

Reasons for Decision to Refuse Urgency

Justice Robert Spear
29 October 2012

Distribution: *George Nakou for the claimant*
 The Attorney General on behalf of all the defendants

1. At 4:25 pm today (Monday 29 October 2012), a claim for judicial review was filed in this Court together with a sworn statement from Mr Nakou as to urgency, a sworn statement from the claimant and two other documents. The claim and the other

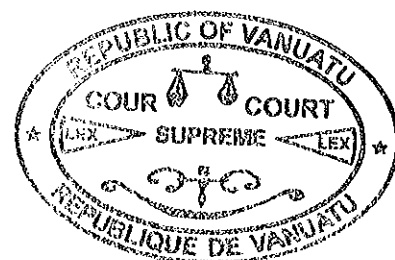


documents filed were presented under cover of a letter from Mr Nakou of 29 October 2012 marked "*Letter of Urgency*" and referring to CPR 18.2.

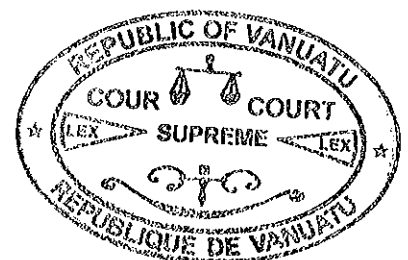
2. This was an 11th hour attempt to prevent the general election for the Port Vila seats taking place until the claim relating to the lawfulness of Mr Abel's exclusion from the list of candidates could be determined. This relates to the general elections for Vanuatu set to take place tomorrow (30 October 2012).
3. In this letter of 29 October 2012, Mr Nakou explained that the claimant's name was excluded from the list of candidates published in the Gazette on 11 October 2012; as was the case with certain other intending candidates. However, while Mr Nakou explains that other candidates had apparently solved their problems and that their names appeared in the second list of candidates published on or about 22 October 2012, and despite the claimant claiming to have resolved the issue that saw his name excluded from the first list, his name did not appear in the second list of candidates on or about 22 October 2012. Furthermore, the claimant's request (through his lawyer) for a reconsideration of his position was refused with notification of that refusal conveyed to Mr Nakou at 12 midday today (29 October 2012) by way of a letter from the State Law Office.
4. Mr Nakou sought a hearing of this claim,

"... to be allocated tonight for the hearing of this application otherwise the whole proceeding is going to be consumed by the event of the poll tomorrow morning.

We request for a short conference for the purpose of proper hearing to be conducted and directions given for a hearing to be conducted late tonight or early in the morning hours and this means that provisional orders suspending the poll and commencing of the poll 12 midday tomorrow so that the hearing can be completed prior to the time at 12 pm".



5. I received a phone call from the Registrar at approximately 5:10 pm today as I had just left the office. The Registrar explained that an urgent claim for judicial review had just been filed in respect of an election matter. I had just left the office for another commitment and indicated that I would call back to the office at approximately 7 pm to review the file. I requested that the file be left in my chambers.
6. I returned just after 7 pm and read the file. This took until 7:45 pm. I then left the office and spoke with Mr Nakou who was outside presumably with his clients and others. I explained that I was not prepared to direct an urgent hearing of this claim given that the intention was to prevent the election tomorrow for the Port Vila seats. I explained that it was simply too late to take such a serious step particularly as there was no representation from the Attorney General. Furthermore, as the apparent basis of the claimant's exclusion from the list of candidates for Port Vila was a sentence of imprisonment imposed by a Magistrate, and that Mr Abel challenged the lawfulness or legality of that sentence, it would be necessary to obtain the Magistrate's Court file and for a careful assessment to be made before it could be determined whether the Electoral Commission's decision to exclude the claimant was lawful or not.
7. I explained to Mr Nakou that I was accordingly not prepared to consider a claim of such importance at this the 11th hour particularly given that the Electoral Commission had rejected the claimant in early October 2012 and with notification of that having been given to the claimant by about 11 October 2012.
8. Furthermore, s 26 (4) of the Representation of the People Act provides that the decision of the electoral commission in respect of eligibility shall be final and shall not be questioned at any proceeding whatsoever. While such a privative provision is not necessarily a barrier to the review of the legality of an administrative decision, it presented as another significant hurdle which the claimant would have to overcome.



9. For all these reasons I was not prepared to accord urgency to this review application. This, of course, does not attempt to address the issue as to whether the decision of the Electoral Commission to exclude or disqualify the claimant was lawful and thus whether the results of the election to be conducted on 30 October 2012 in respect of the Port Vila seats should be left undisturbed. This decision is solely whether the claim should be accorded the urgency sought by Mr Nakou and I rule otherwise.

BY THE COURT

