

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

Constitutional Case No. 08 of 2014

IN THE MATTER OF: **ARTICLES 53(1), (2) & 43(2) & 21(2), (3) OF
THE CONSTITUTION**

BETWEEN: **HON. MOANA KALOSIL CARCASSES**
First Applicant

HON. RIALUTH SERGE VOHOR
Second Applicant

HON. MARCELLINO PIPITE
Third Applicant

HON. TONY NARI
Fourth Applicant

HON. TOARA DANIEL
Fifth Applicant

HON. JEAN YVES CHABOD
Sixth Applicant

HON. ARNOLD PRASAD
Seventh Applicant

HON. SILAS YATAN ROUARD
Eighth Applicant

HON. HOSEA NEVU
Ninth Applicant

HON. PASCAL IAUKO IARIS
Tenth Applicant

HON. JOHN AMOS VACHER
Eleventh Applicant

HON. TONY WRIGHT
Twelfth Applicant

HON. JEROME LUDVAUNE
Thirteenth Applicant

HON. PAUL TELUKLUK
Fourth Applicant

HON. STEVEN KALSAKAU
Fifteenth Applicant

HON. WILLIE JIMMY TAPANGARARUA
Sixteenth Applicant

HON. JONAS JAMES
Seventeenth Applicant

HON. ROBERT SIKOL BOHN
Eighteenth Applicant

HON. CHRISTOPHER EMELEE
Nineteenth Applicant

HON. SAMSON SAMSEN
Twenty Applicant

HON. THOMAS LAKEN
Twenty First Applicant

HON. KALFAU MOLI
Twenty Second Applicant

AND:

HON. PHILIP BOEDORO
SPEAKER OF PARLIAMENT
First Respondent

REPUBLIC OF VANUATU
Second Respondent

HON. SIMEON KALTALIU
First Interested Party

HON. JOHN TESEI
Second Interested Party

HON. RICHARD NAMEL
Third Interested Party

HON. RICHARD MERAH
Fourth Interested Party

HON. MORKING STEVENS IETIKA
Fifth Interested Party

Hearing: *Friday 5 September 2014 at 2 pm*

Judgment : *Monday 8 September 2014 at 9am*
Before: *Justice Stephen Harrop*
Appearances: *Avock Godden and Justine Ngwele for the Applicants*
Kiel Loughman for the First Respondent
Florence Williams and Kent Ture (SLO) for the Second Respondent
Jack Kilu for the Interested Parties

RESERVED JUDGMENT OF JUSTICE S M HARROP

Introduction

1. When the Speaker of Parliament receives a request for an extraordinary session, purportedly signed by a majority of members of Parliament, but is also in possession of information suggesting that one or more signatures may not have been appended with genuine assent to the request, what should the Speaker do? Must he ignore that information and simply grant the request without delay or inquiry or should he take steps to ascertain the genuineness of signatures? If the latter, how far is it proper for him to go?
2. The applicants say that the Speaker has no discretion in the matter and that he is obliged to accept the signatures at face value and grant the request for an extraordinary session. Any doubts about the validity of the signatures may then be explored by Parliament. They say it is a breach of their constitutional rights for the Speaker to decline a request because of such doubts. The first respondent, the Speaker, however contends that he has no obligation or even ability to grant such a request unless and until he is satisfied that a majority of MPs have genuinely requested one.
3. These are the questions arising for consideration on this urgent constitutional application.

The Application before the Court

4. The 22 applicant MPs, in their Amended Petition filed on 4 September 2014, apply for the following relief:
 - “1. A declaration that the decision of the Honourable Speaker of Parliament dated 1 September 2014 to dismiss the Petitioners’ request for an extraordinary session of Parliament is unconstitutional and unlawful;
 2. A declaration that the constitutional rights of the Petitioners and each of them have been infringed;
 3. A declaration that the Speaker of the Parliament shall forthwith summon Parliament to meet in extraordinary session on Friday 5 September 2014;

4. *A declaration that the Clerk of Parliament sends to each member of Parliament a notice stating that the extraordinary session will commence on Friday 5 September 2014.*
 5. *Costs of the application.*”
5. Obviously the passage of time has overtaken matters to the extent that if the application is granted there would need to be amendment to the times referred to in orders 3 and 4.
 6. The application (which is what it is, rather than a petition) is made under Articles 53 (1) and (2) of the Constitution of the Republic of Vanuatu which provide:
 - “(1) *Anyone who considers that a provision of the Constitution has been infringed in relation to him may, without prejudice to any other legal remedy available to him, apply to the Supreme Court for redress.*
 - (2) *The Supreme Court has jurisdiction to determine the matter and to make such order as it considers appropriate to enforce the provisions of the Constitution.*”
 7. The applicants say, and this is not disputed, that they deposited with the Speaker of Parliament, at around 2:55 pm on Friday 29 August 2014, the following 3 documents:
 - “(a) *A notice signed by a majority of MPs (27) requesting Parliament to convene for an extraordinary session;*
 - (b) *A motion of no confidence in the Prime Minister, the Honourable Joe Natuman signed by the first, second, fourth, sixth, seventh, eighth, twelfth, fifteenth and sixteenth applicants; and*
 - (c) *Reasons for the motion of no confidence against the Prime Minister.*”
 8. The applicants say that the request for the extraordinary session was made pursuant to Article 21 (2) of the Constitution which provides:

“Parliament may meet in extraordinary session at the request of the majority of its members, the Speaker or the Prime Minister.”

 They further say that the motion of no confidence was made pursuant to Article 43 (2) which provides:

“Parliament may pass a motion of no confidence in the Prime Minister. At least one week’s notice of such a notice shall be given to the Speaker and the motion must be signed by one sixth of the members of Parliament. If it is supported by an absolute members of Parliament, the Prime Minister and other Ministers shall cease to hold office forthwith but shall continue to exercise their functions until a new Prime Minister is elected.”
 9. The applicants say that on Monday 1 September 2014 the Speaker wrongly and in breach of their constitutional rights declared the motion of no confidence not in order *“because 5 of the Honorable (sic) members have withdrawn their signatures prior and after the deposition of that motion.”*

10. The applicants say that the Speaker fell into error because the correspondence he had received withdrawing signatures from a motion of no confidence was misplaced because those signatories had never signed the motion of no confidence, only the request for Parliament to convene in extraordinary session. They contend that on receipt of the notice requesting an extraordinary session to be convened, signed by 27 members of Parliament, it was incumbent on the Speaker to summon Parliament pursuant to standing order 14 which provides:
- “14 (1) Whenever the Speaker so decides or is requested by the Prime Minister or a majority of the members of Parliament, he shall summon Parliament to meet in extraordinary session;*
- (2) Any request made to the Speaker under paragraph (1) shall be signed by the Prime Minister or the members requesting the extraordinary session. Such request shall contain:*
- (a) The reason for which an extraordinary session is requested;*
- (b) A statement of the specific matter or matters to be discussed during the extraordinary session;*
- (c) The expected duration of the extraordinary session and a proposed date for its opening.”*
11. The applicants say that the calling of an extraordinary session of Parliament at the request of the majority of the members of Parliament is not a matter in respect of which the Speaker has any discretion. Further, any withdrawal of signatures pertaining to such a request is not a matter for the discretion of the Speaker but is a matter for Parliament.
12. In support of the application the applicants filed sworn statements from the Leader of the Opposition (two, one as to urgency), MP Tony Nari, MP Thomas Laken (two), MP Morking Stevens Iatika and Len Wai, a bus driver.

Response to Application

13. In his written response, the Speaker admits receiving the documents referred to but denies that the notice requesting Parliament convene for an extraordinary session was signed by the majority of members of Parliament. He says that (at least) the MP for Tafea Outer Islands, John Tesei, the MP for Malekula, Simeon Kaltaliu and the MP for Ambae, Richard Merah did not sign the notice. He says further that he understood that they did sign a loan agreement sometime on or about 11 August 2014 (this date was later clarified to 8 August 2014) with the member of Parliament for Pentecost, Tony Nari representing the Leader of the Opposition, the Honourable Moana Kalosil Carcasses.
14. The Speaker contends that the signature of those 3 MPs on the loan agreement is being used unlawfully to request an extraordinary session of Parliament when that is not the purpose for which they supplied their signatures. The Speaker further says that on or about 12 August 2014, suspecting that the Opposition could use their

respective signatures on the loan agreement for a motion of no confidence against the Prime Minister, the 3 MPs signed a letter to him withdrawing their respective signatures to any upcoming such motion (should there be one).

15. The Speaker says he determined that the 3 MPs did not sign the notice requesting the Parliament convene for an extraordinary session and accordingly the prerequisite for that request, namely the signing by a majority of the members of Parliament, was not established. Accordingly he denies that he was in error or in breach of the constitutional rights of any MPs when he declined to convene Parliament for an extraordinary session.
16. The Speaker further says that the MP for Tanna, Morken Stevens Ietika did not sign the request. Although not expressly mentioned in his response, it is also clear that the Speaker relies on the denial of signing of the request by the member of Parliament for Tanna, Richard Namel.
17. For these reasons the first respondent denies any breach of the applicants' Constitutional rights.
18. In support of his response the Speaker filed two sworn statements and was cross-examined by Mr Godden.

The Republic of Vanuatu and the Interested Parties

19. As required by rule 2.4 (1) and (b) of the Constitutional Procedural Rules the Republic of Vanuatu was named as a respondent and served with the application. On its behalf Ms Williams indicated that the Republic abided the decision of the Court and did not wish to be heard on any matter except for the question of costs.
20. In the initial petition filed by the applicants on 2 September 2014 the 27 applicants included the five MPs who had told the Speaker that they did not sign the request for an extraordinary session. In the amended petition those five MPs were named as interested parties rather than applicants and Mr Kilu received instructions to act for three of them, MPs Tesei, Kaltaliu and Mera. He filed sworn statements on their behalf and submissions but ultimately, because of the view I take as to what evidence is relevant to the issues I have to determine, I have, despite from abundance of caution having joined all five MPs as interested parties pursuant to rule 3.2 of the Code of Civil Procedure, put this evidence and Mr Kilu's submissions to one side.

The hearing of the application

21. The hearing was rather hastily convened at 2 pm on Friday 5 September 2014 and the Court sat until approximately 5:50 pm to receive some further evidence by way of cross-examination of MP Tony Nari and the Speaker. Submissions were also made by Mr Godden and Mr Loughman, those of the former being in writing. I reserved my judgment until 9 am on Monday 8 September 2014.

The facts

22. I do not propose to go through each of the sworn statements but instead, because the facts which I consider relevant to the issue I have to determine are not I believe materially disputed, I will set these out here. In the event that I have misunderstood that a fact is undisputed, I make findings as below.
23. Chronologically the first relevant event is the receipt by the Speaker on 12 August 2014 of a letter signed by the MPs Nasei, Mera and Kaltaliu (“*the three MPs*”) which stated:

“Re: Withdrawn(sic) of Signatures

Sir this notes (sic) serves to inform you, that we the under signed Mps have withdrawn out (sic) Signatures from any upcoming motion of no trust in the prime Minister Natuman should there be any.

As the issue of Scanning of signatures from one paper to another become (sic) a popular tactic from most politicians in time of motions. We declare our stand clear in support of Prime Minister Natuman.

Yours in service”

24. The Speaker met with those three MPs later on 12 August 2014. They told him the circumstances surrounding how their respective signatures had been obtained by the opposition. Sometime on 8 August 2014 they had met MP Tony Nari at the domestic airport in Port Vila. Each of them met Mr Nari separately in Mr Wai’s bus and signed a loan agreement between each of them and the Honourable Leader of the Opposition, Mr Carcasses. The latter was not present, only Mr Nari. Upon signing the loan agreement they were each given the sum of Vt 500,000.
25. After receiving the money they became aware that their signatures could be used by the Opposition to assist with a no confidence motion against the Prime Minister and that is why they had written to the Speaker. The Speaker was told that all three signatures had been placed on a single sheet of paper attached to the loan agreement. He was given an unsigned copy of the loan agreement.
26. When the Speaker received the documents from the applicants on 29 August 2014 at 2:55 pm, being aware of the information from the three MPs, and noting that the three MP’s signatures were on a separate page attached to the request for an

extraordinary session, formed the preliminary view that they had not actually signed the request for such a session but rather had only signed the loan agreement.

27. The Speaker's reaction was to write immediately to every Government-aligned MP, in a letter dated 29 August in the following terms:

"Dear Honorable (sic) member,

Re: Motion of No confidence in the Prime Minister Hon. Joe Natuman

I wish to inform you that I am in receipt of a motion of no confidence in the Prime Minister, Honourable Joe Natuman dated 29th August 2014.

I note that you had signed the Motion of Confidence and on the records of the Parliament your registered affiliation is with the Government led by Honourable Prime Minister Joe Natuman.

Prior to my decision on the motion of confidence, I request you write to me verifying whether your signature on the said Motion is in order and in accord with your will.

I shall be grateful for your earliest response before the close of business on Monday 1 September 2014."

28. The Speaker met with the three MPs on 1 September and received oral confirmation that they had not signed any request for Parliament to convene an extraordinary session.

29. On the same day the Speaker received four letters which are identical in their wording from the three MPs and from the member of Parliament for Tanna, Richard Namel. These letters stated:

"Dear Honourable Speaker,

Re: Motion of No confidence in the Prime Minister Hon. Joe Natuman

I am writing to you with respect to the motion of no confidence dated 29th August, 2014, to which my signature is attached.

I wish to inform your Honourable office that I have not signed any Motion of No Confidence against the Prime Minister Honourable Joe Natuman. The signature that is mine that is attached to the document is in no way related to this motion and at no time have I ever signed a document supporting a motion against the Honourable Joe Natuman.

The affixing of a copy of my signature to this document is a fraud and has been done without my permission.

Thus, further to the above reasoning, I am demanding that the calling of Parliament to debate the above subject matter be withdrawn immediately."

30. Following receipt of that information the Speaker issued a letter to the Honourable Leader of the Opposition, dated 1 September 2014, in the following terms:

“Dear Hon. Leader of Opposition,

Re: Motion of No Confidence against the Right Honorable Prime Minister Joe Natuman

I have received a motion deposited in my office on Friday 29th August 2014 at 2:55 pm and after analysis in process and substance I hereby make the following declaration:

*In accordance with the power conveyed to me under Article (a) 22 (2) of the Constitution and standing order 10 (2) (5) and for the purposes of a good administration in this National Parliament under the neutrality of the Office of Speaker, **I hereby declare that the motion is not in order** because 5 of the honorable (sic) members have withdrawn their signatures prior and after the deposition of that motion.”*

31. Subsequently the Leader of the Opposition wrote to the Speaker saying that he or members of his group had spoken with the signatories and did not accept that the declaration was correct. He required that proof of withdrawal be provided immediately. The Speaker did respond immediately, on 1 September, by providing copies of the four letters mentioned earlier and a letter from MP Morkin Steven Ietika, rather surprisingly dated 5 June 2014, in the following terms:

“Re: WITHDRAWAL OF MY SIGNATURE FROM THE MOTION OF NO CONFIDENCE AGAINST HONORABLE JOE NATUMAN, PRIME MINISTER OF THE REPUBLIC OF VANUATU

Sometimes last month, May 2014, I signed a long with other members of Parliament in the Opposition Block a motion of no-confidence against the Honourable Joe NATUMAN; Prime Minister of the Republic of Vanuatu.

I am not sure at this stage, the stage and whereabouts of the Motion being circulated amongst members of the Opposition Block.

However this note serves to inform your office that as a signatory to the Motion, I hereby withdraw my signature in support to the Motion this 5th day of June 2014. Accordingly, as Vice President of the National United Party, a coalition partner in the current regime, I bleach my full support to Honourable Joe Natuman as Prime Minister of the Republic of Vanuatu.

My apologies for any convenience caused.”

32. I record that in his statement in support of the application, Mr Iatika says this letter has nothing to do with the current request for Parliament to convene.
33. In his first sworn statement dated 4 September 2014, the Speaker says that the wording of his decision that the motion of no confidence was not in order should have included the point that the three MPs had never signed the request for an

extraordinary session of Parliament and therefore the request submitted was not signed by a majority of MPs.

My approach to the issue I need to decide

34. Because the issue I have to decide is whether or not the Speaker's decision of 1 September 2014 was correct, as he says, or amounted to a breach of the applicant's constitutional rights, as the applicants say, I put to one side the evidence of the member of Parliament Tony Nari who was cross-examined at the hearing before me.
35. This is for the same reason that I have put to one side the sworn statements of the three MPs. The assessment of whether the Speaker's actions were justified must be made solely on what he knew and believed at the point of time, on 1 September 2014, that he made his decision.
36. There is obviously a factual dispute between Mr Nari and the three MPs as to what occurred at the domestic airport on 8 August 2014. It is neither necessary nor appropriate for me to discuss or attempt to resolve that dispute in determining this application. Ultimately the conduct of the members of Parliament in question may be something for Parliament to debate, or other authorities to investigate. I make no comment or finding on it.
37. In order to determine the issues arising on this application it is therefore essential to determine what the Speaker knew or believed at the time he made his decision on 1 September, about the authenticity, or otherwise, of the signatures of the three MPs. For present purposes I put to one side the position of MPs Namel and Ietika. If the Speaker's decision to disregard the three MP's signatures was wrong then his decision must equally be wrong in respect of those other two. On the other hand if his decision was right in respect of the three MPs then that will be sufficient for the current application to be dismissed.
38. I find that the evidence discloses that the Speaker knew or believed the following about the signatures of the three MPs at the point of making his decision on 1 September:
 - (a) He had the 29 August request purportedly signed, on a separate page attached to other pages of signatures, by the three MPs.
 - (b) He also had their letter of 12 August 2014 purporting to withdraw in advance those signatures.
 - (c) He also had the information given to him at the meeting he had with the three MPs on 12 August about the circumstances in which they signed the document attached to the request for an extraordinary session. That led

him to believe, rightly or wrongly, that the page they had signed was to signify their assent to the loan agreement and to nothing else.

- (d) He also had oral confirmation from meeting with the three MPs on 1 September that they had not signed the request for Parliament to convene in extraordinary session.
- (e) He had received the letters from the three MPs dated 1 September in which they told him that they had not signed any motion of no confidence and that *“the signature that is mine that is attached to the document is in no way related to this motion and at no time have I ever signed a document supporting a motion against the Honourable Joe Natuman.”* The letters went on to say that the affixing of their signature to the document was *“a fraud and had been done without my permission”*.

39. Accordingly the Speaker had on four separate occasions (12 August in writing, 12 August orally, 1 September orally and 1 September in writing) received adamant advice from the three MPs that they had not signed any motion of no confidence nor any document in support of that.

40. In passing I note (the Speaker did not in his evidence mention this is a factor in his decision) that he might have drawn further support for his decision from the form of the three documents provided by the applicants. The letter dated 29 August requesting an extraordinary session of Parliament had at the foot of its first page (which had the signatures of MP Carcasses and MP Rialuth) the following:

“Request of Extraordinary Session 29.08.14”.

The other pages attached with the signatures were by contrast on blank pages with no such note at the foot.

By further contrast the letter of 29 August by which the motion of no confidence was given to the Speaker and which was signed by ten members of Parliament had on *both* of its pages at the bottom *“Notice of Motion 29.08.14”*. In addition the motion itself which was signed by nine of those ten MPs had at the foot of each of its pages *“Motion of No Confidence against Hon. Joe Natuman Prime Minister 20.08.14”*. This would appear to contain a typographical error as to the date but for present purposes what matters is that all of the pages relating to the motion of no confidence and the letter by which it was presented have the signatures on pages which record at their foot the purpose for which the signatures are being provided. That is not the case in respect of the pages containing 25 of the 27 signatures requesting an extraordinary session of Parliament.

Relevant Constitutional Provisions

41. It is not necessary to discuss the relevant constitutional provisions, which have already been cited above. There is no dispute that the applicants are entitled to apply under Article 53 in respect of any alleged breach of Article 21 (2). The issue here is not whether there is jurisdiction for this application but whether the grounds for it are made out.

Relevant Case Authorities

42. I have considered and taken into account five judgments, one of the Court of Appeal and four of the Supreme Court in determining the correct approach to this case.

Attorney-General v. Jimmy [1996] VUCA 1

43. In this case the Court of Appeal confirmed that the majority of members of Parliament have a constitutional right to require that Parliament be summonsed an extraordinary session, that right being found in Article 21 (2). Provided a request by a majority of members is made then the Speaker may not reject it and decline to summon Parliament.

44. This judgment does not address the issue arising here namely what happens when there is a question as to the authenticity of some of the signatures on a document requesting an extraordinary session.

Lini v. Speaker of Parliament [2004] VUSC 42

45. This was a case where the Speaker had failed to act promptly on a request for an extraordinary session and there was a withdrawal of the signatures of one of the MPs, Arnold Prasad, two days after the notice requesting an extraordinary session was served on the Speaker. It was noted that the withdrawal was *not* in respect of the request for an extraordinary session but rather in respect of the no confidence motion itself so the Court found that Mr Prasad's earlier request for an ordinary session had not been withdrawn. It remained in place and so there was still a majority. It was held that the Speaker therefore ought not to have declined the request for an extraordinary session.

46. The learned Chief Justice said at page 13 of that judgment:

“The Speaker is to check on the face of the document if there is a majority of the Members of Parliament who signed and requested him to summon Parliament in an Extraordinary Session. Once that exercise is done, it is sufficient for the Speaker to accept the request and the notice and the motion of no confidence and summon Parliament in an extraordinary session as requested.

The calling of an extraordinary session of Parliament at the request of a majority of the members of Parliament is not a matter at the discretion of the Speaker of Parliament. Once the respondent/Speaker of Parliament receives such a request by the majority of the members of Parliament in accordance with Article 21 (2) of the Constitution, the Speaker has no choice, he must summon Parliament.”

47. The Chief Justice noted that the purported withdrawal was not a matter for the Speaker's consideration but was a matter for Parliament to consider pursuant to Article 43 (2) of the Constitution.
48. This case does not address the situation arising here of the Speaker having information calling into question the authenticity of some of the signatures on the request for an extraordinary session.

Natapei v. Wells [2012] VUSC 260

49. This was a case where the Speaker received a request for an extraordinary sitting which was signed by a majority of members of Parliament but on the day he received them he then received a letter from one of the MPs who had signed it, Kalfau Moli, informing him that he had decided to withdraw his signature.
50. The Chief Justice, consistently with the earlier decisions, held that the withdrawal of the signature was not a matter at the discretion of the Speaker but rather was a matter for Parliament. The Speaker had received an undoubtedly valid request from a majority of members and a subsequent withdrawal of one of them did not permit him to decline the valid request which had been made. He had a constitutional obligation to convene Parliament as requested by the majority.
51. Again, the facts of this case were different from the present: here it is alleged not that there was a withdrawal of an intentionally-applied signature based on change of mind but rather that three signatures were not genuinely and properly appended to the request in the first place.

Korman v. Republic of Vanuatu and Abel and Daniel [2010]VUSC 215

52. In this case the Chief Justice rejected a constitutional application because there was evidence that the MPs Abel and Daniel, whose signatures were among the 27 requesting an extraordinary session of Parliament, had in fact never signed that document.
53. In considerable similarity with the present case, the evidence was that their names and signatures appended to a solidarity agreement between the members of the Parliament for the Shepherd's outer Islands group had been used improperly without their knowledge or consent to support the request for an extraordinary session.
54. The Chief Justice, in upholding the Speaker's decision to decline to convene Parliament, noted at page 16 of his judgment:

“It is accepted that the only rational and sensical (sic) factual justification is that because MP Toara Daniel and MP David Abel had never signed a notice and motion of no confidence, the only signature that each and both of them could possibly and rationally withdraw must be their signatures appearing on the request to convene Parliament. This means that although they said in their letters to the Speaker dated

18 October 2010 that they withdrew their signatures on the motion of no confidence, they intended to withdraw (sic) their signatures appearing on the request to convene Parliament on 25 October 2010.”

Vanuaroroa v. Republic of Vanuatu [2013] VUSC 102

55. I found this relevant judgment of the Chief Justice from my own research, it not having referred to me by either Mr Godden or Mr Loughman. Frankly, even allowing for the urgency involved here, it should have been, particularly given that it was a case of alleged misuse of signatures. Counsel all have a duty to the Court, exceeding that to their client, to put before it every relevant judgment, whether it supports their case or not. I note Mr Loughman appeared for the Speaker in that case, so it is all the more surprising that he did not refer it to me, especially given its regency.
56. This was a case where the Speaker refused to summon Parliament in an extraordinary session because the request contained 4 signatures which he considered had been forged. (There were other grounds which I will not discuss here).
57. At page 31 of his judgment the Chief Justice said:
*“In the present case, after a Request was lodged to the Speaker, Four (4) members of Parliament went to see the Speaker and informed the Speaker that they did not sign the Request dated 10 July 2013 which was lodged to his office calling for an extraordinary session. They inform (sic) the Speaker that their names and signatures were used on documents for different purposes and at different times. They did not sign the request of 10 July 2013. **The Speaker has to take the complaints of these members of Parliament into consideration as he did in this case as part of his constitutional duty.**”* (emphasis added)
58. The Chief Justice went on:
“The ratio decidendi of the case AG v. Willie Jimmy which was applied in Lini v. Speaker in 2004, are relevant only against the actions or behaviours or attitudes of the Speaker of Parliament after a request has been lodged and there were no complaints from members of the Parliament about the use of their signatures or their consent not being sought or authorised to show their intention or support for the request or calling of Parliament in an extraordinary session.
The Speaker is entitled to consider the complaints of any member of Parliament that he/she does not sign a request pursuant to Article 21 (2) of the Constitution. Such a case must also be considered on its facts and circumstances as the case of Korman v. Republic of Vanuatu [2010] VUSC 215: Constitutional Case No. 2 of 2010 [20 Nov 2010]”(again, emphasis added)

Discussion and Decision

59. The Vanuatu Parliament sits only twice a year. Accordingly, the Constitutional right of a majority of members of Parliament to request an extraordinary session, for whatever purpose but certainly including an important motion of no confidence in

the Prime Minister, is a valuable and vital right. The Speaker is appointed by the Government but is required to carry out his duties in an impartial, objective and apolitical way.

60. Accordingly when the Speaker receives a valid request from a majority of MPs he has, as the authorities make clear, no discretion. He must summon Parliament. It would be inconsistent with his impartial role if he were, without any basis to do so, to inquire into the authenticity of signatures, or to delay responding to the request while efforts are made by Government members to try to obtain withdrawals. Even if there are such withdrawals, as *Natapei v Wells* confirms, the Speaker cannot refuse to convene Parliament. It is worth remembering that, cost and inconvenience aside, there is no prejudice to anyone arising from the mere convening of Parliament; it is the outcome of motions tabled and debated in an extraordinary session which is ultimately what matters,
61. That said, the Speaker's absence of discretion to *refuse* a valid request has the corollary that he equally has no discretion to *grant* such a request unless it is a valid written request to which a majority of MPs have knowingly assented by appending their signatures.
62. As both the *Korman* and *Vanuaroroa* judgments make clear, where the Speaker has information which casts doubt on the authenticity of one of more signatures (if their falsity would reduce the number below a majority), he is not only entitled but has a Constitutional *duty* to inquire into complaints. That is simply because he has no power or ability to convene Parliament unless he has a valid request from a majority of MPs. I reject Mr Godden's submission that a Speaker must ignore any such concerns, convene Parliament and leave it to Parliament to investigate. His submission does not in my view accord with common sense (for example a Speaker may have unanswerable evidence of fraud or forgery) but in any event is at odds with the two Supreme Court judgments.
63. When one considers the knowledge and belief of the Speaker at the time he made his decision on 1 September 2014, I conclude he was amply justified in reaching the view that the three MPs had not genuinely and intentionally signed the request for an extraordinary session. He knew that the document with their signatures on which was attached to the request had been signed some 21 days earlier and they were adamant that it had been signed for a different purpose. As Mr Loughman pointed out in his closing submissions, standing order 14 (2) requires that the request made to the Speaker "*shall be signed by..... the members requesting the extraordinary*

session.” Here the three MPs did not sign the document dated 29 August 2014. They appended their signatures to a blank page on 8 August.

64. What the Speaker was led to believe and was entitled to believe given the number of occasions and the consistency of advice from the three MPs he received was that those MPs had never seen the request for an extraordinary session. Accordingly their signatures did not amount to a knowing and intentional support of it. Further they had provided the Speaker with an explanation for how their signatures had been obtained, namely for a different purpose, the loan agreement.
65. In my view the Speaker was therefore entirely justified in reaching the conclusion that although the request for an extraordinary session before him *purported* to be made by 27 MPs, he could only be satisfied of the validity of the requests in respect of 24 (or perhaps only 22) which in either case was well short of a majority.
66. I respectfully endorse and apply what the Chief Justice said in the *Vanuaroroa* case. I reiterate that I reject Mr Godden’s submission that a Speaker has no power to assess the validity of the signatures which are attached to a request for an extraordinary session. Where there is no doubt that the signatures are valid then of course he has a duty promptly to convene Parliament. But where he has information suggesting that the signatures relate to a different document and have been used improperly and without the consent and authority of those MPs then, as the Chief Justice said: “*The Speaker has to take the complaints of these members of Parliament into consideration.... as part of his constitutional duty*”.
67. In this case, in my view, the Speaker acted entirely properly in the way in which he enquired into the validity of the three MPs signatures following receipt of the request, having regard to the information he already had that their signatures may be misused for such a purpose. He namely wrote to Government MPs seeking confirmation of the validity of their signatures, and in response he received compelling information from the three MPs that their signatures had been improperly and fraudulently used. Once he received that information he had no choice but to decline the request because it had not come from a true majority.
68. I note too that the Speaker did not dally; he received the request at 2.55pm on the Friday and by the close of the next working day, the Monday, he had completed his inquiries and responded in writing to the Leader of the Opposition. He also promptly (the same day) supplied copies of the letters from the five “withdrawing” MPs.
69. For these reasons I am satisfied that the application must be dismissed.

70. In reaching this decision I have done no more than applied the principles stated by the Chief Justice in the *Korman* and *Vanuaroroa* cases to the facts of this case. While of course the facts are somewhat different the common theme of misuse of signatures, or worse, is common to all three cases. In both of his judgments the Chief Justice concluded with a dictum expressing the hope that such dishonest and fraudulent practices as those cases revealed would in future be avoided by proper Parliamentary procedures. While I have decided this case without determining what actually occurred in connection with the obtaining and use of the three MPs' signatures (as opposed to what the Speaker believed, based on their advice, had occurred), I repeat the expression of hope.
71. It is important that the Supreme Court issues consistent decisions on Constitutional matters, so that the public and especially politicians are able to predict with reasonable confidence how issues of this kind will be determined. The position as to what the Speaker ought to do when faced with evidence casting doubt on the authenticity of signatures on a request for extraordinary session, was, as a result of the *Korman* and *Vanuaroroa* judgments, clear before this case was launched. Accordingly the application should never have been made. This judgment does not break new ground, but merely confirms the old.
72. I have not overlooked the point quite properly made by Mr Godden that despite the Speaker's experience as a longstanding member of Parliament, the wording of his decision letter was sloppy and incorrect. The Speaker himself has recognised this in paragraph 9 of his first sworn statement.
73. In truth, the real reason for the Speaker's decision to refuse the request was that he was not satisfied that the three MPs had *ever* agreed to request an extraordinary session. It was not a case of their having withdrawn an earlier intentional request but of never having made one in the first place.
74. The fact that the reason given for the decision to refuse the request was not correct, is of no material consequence where there was clearly an alternative basis for the decision which was inadvertently not stated.
75. Nor have I overlooked the point, elicited by Mr Godden in the cross-examination of the Speaker and in submissions, that the three MPs themselves have not clearly distinguished between the notice of motion of no confidence and the request for an extraordinary session. In their letter of 12 August 2014, they purport to withdraw their signatures "*from any upcoming motion of no trust*". They do not purport to withdraw in advance from any request for an extraordinary session. Further in their letters of 1 September they inform the Speaker that they "*have not signed any motion of no confidence against the Prime Minister*".

76. Of course the three MPs did not sign the motion of no confidence nor the letter introducing it, they only (on the face of it) signed the request. But when the evidence as a whole is considered there can be no doubt that what they are referring to in their letters of 1 September is the request for an extraordinary session. Their mixing of the two is understandable because the sole purpose of the request for the extraordinary session was to place the motion of no confidence before Parliament. The letters say:
- “The signature that is mine, that is attached to the document is in no way related to this motion and at no time have I ever signed a document supporting a motion against the Honourable Joe Natuman.”*
77. Understandably, the MPs have lumped the request and the supporting documents together and what they clearly refer to in saying that the signatures were not theirs are their signatures on the request for extraordinary session, not the motion of no confidence. That is the only document they signed so they cannot be referring to another.
78. Given the justification for the conclusion that the three MPs had not signed the request, it would have been entirely inappropriate for the Speaker to have granted the request on the spurious basis that the three MPs had wrongly referred to the motion of no confidence as being the document that they had not signed when they clearly in all the circumstances meant the request for extraordinary session.
79. In short, both the three MPs and the Speaker have been guilty of inaccurate use of terminology but their respective intentions are clear.
80. It is not a matter for the Court but for any group of 27 members of Parliament to decide in what form to put a request for an extraordinary session before the Speaker and equally a matter for the Speaker to decide what format is acceptable to him. That acknowledged, the Court and the public generally have an interest in avoiding unnecessary applications of this kind.
81. In this context I observe that this case could so easily have been avoided had the Opposition members presented their request in a more formal way.
82. I respectfully suggest to any group of members of Parliament wishing to make such a request in future that a document be prepared with numbered pages with the name and purpose of the document and the date at the top of each page, that each signature is witnessed by a witness who states his name, address and occupation, and that the witness records the date and time of the signing. Further, all signatories should initial each of the other pages in the document apart from the one they have signed. These are fundamental steps which are taken to ensure the validity of many types of significant legal documents. Such an important document as a request to the Speaker

that Parliament convene in extraordinary session to debate a motion of no confidence in the Prime Minister deserves nothing less.

83. In my view it is a corollary of the Speaker's obligation to grant promptly a valid request for an extraordinary session that the applicants provide their request in a form which unquestionably and demonstrably shows that there are at least 27 MPs genuinely requesting such a session. If the applicants have the numbers to make such a request, then there should be no difficulty in providing such a document. If they do not have the numbers, then they should not be making the request as there is no jurisdiction for the Speaker to grant it.

Conclusion

84. The application is dismissed. The respondents and the interested parties are entitled to costs against the applicants (in respect of the second respondent these should be nominal only). These are to be fixed if they cannot be agreed.

BY THE COURT