

BETWEEN: Xavier Emanuel Harry

Petitioner

AND: Electoral Commission

First Respondent

Andrew Napuat

Second Respondent

Coram: *Vincent Lunabek – Chief Justice*

Counsel: *Mr Britten Yosef for Petitioner*

Mr Kent Tari and Sami Aron for First Respondent

Mr Kiel Loughman for Second Respondent

JUDGMENT

This is an election Petition filed by the Petitioner pursuant to section 62 of the Representation of the People Act [Cap 146] (“the Act”). The Petitioner was a candidate at the Parliamentary elections held on 22 January 2016 and he contested the elections held in the Constituency of Tanna.

Section 62 of the Act provides:

“62. Examination of votes cast when on an election the election is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes the Supreme Court may direct an examination of the counted and void votes and of the counting of votes.”

The Petitioner, Mr Xavier Emanuel Harry claimed that the second Respondent, Mr Andrew Napuat, was not validly elected for the seventh (7th) parliamentary seat of Tanna Constituency to the Vanuatu Parliament at the general elections of 22 January 2016 because:

- a) The unofficial results of those elections show that he (Xavier Emanuel Harry) and the Respondent (Andrew Napuat) obtained the same number of 737 votes equally.

- b) His political observers, at all polling stations around Tanna, observed and knew that during the unofficial counting process that he (Petitioner) and the second Respondent (Andrew Napuat) secured the same numbers of 737 votes equally.
- c) However, during the official declaration made and the publication of the results of these elections in the Gazette on 1 February 2016 showed that the Second Respondent (Andrew Napuat) secured 746 votes and he (Petitioner) secured 734 votes.

He was not happy with the results and so he filed this election Petition seeking an examination of votes cast in the Constituency of Tanna in respect to the elections of 22 January 2016.

The Court made orders and directions for examination of votes cast pursuant to section 62 of the Act in respect to the Petition. The Court issued detailed guidelines to assist the examination process. An Examination Committee was appointed to proceed with the examination of counted and void votes and of the counting of votes. The committee is directed and required to submit a report to the Supreme Court on the process of examination and its findings on the examination of counted and void votes and examination of the counting of votes. The Report must be a confidential one and must be provided in a sealed envelope to the Supreme Court.

The Examination Committee provided a report to the Supreme Court on 8 April 2016. All parties are notified to attend a conference on 19 April 2016 before the Supreme Court in Civil Room Hearing No.1 at 3.00PM o'clock.

A copy of the Report was provided to each of the parties and they are each given opportunity to comment or make submissions on the Report dated 8 April 2016.

The Report shows that the Examination of votes cast in respect to Parliament elections of 22 January 2016 in the Constituency of Tanna, was thoroughly undertaken by the Examination Committee. The Report contains detailed examination of counted and void votes and counting of votes cast for the Petitioner and the second Respondent at the elections of 22 January 2016 at Tanna Constituency.

The Report shows the following findings of the Examination Committee:

Recount Findings:

Petitioner: 735 Valid Votes (the official results were 734 and upon recounting, there was 1 added vote at the polling station of Lenaken [734 + 1= 735]).

Second Respondent: 745 Valid Votes (the official results were 746 and upon recounting, there was 1 less vote at the Polling station of Loukualkual [746 – 1= 745]).

The test to apply in such exercise is that if the number of miscounted votes exceed the plurality of votes cast, the election cannot stand. Mr Britten Yosef concedes and accepts on behalf of the Petitioner that the Second Respondent had secured the majority votes of 745 cast which qualified him (Second Respondent) as duly elected Members of Parliament to occupy the seventh seat of Tanna Constituency on the Parliament elections of 22 January 2016.

The Court accepts the findings of the Examination Committee contained in the report referred to above. Applying the test in this election petition, this Petition cannot succeed. The Petition fails.

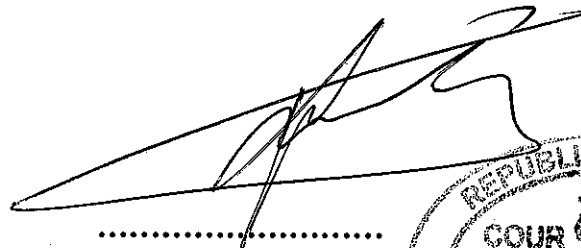
The Court makes the following orders:

ORDERS

1. The declarations and orders sought by the Petition filed 19 February 2016 are denied.
2. The election Petition in Election Petition Case No. 394 of 2016 is dismissed.
3. The Electoral Commission shall issue a declaration published in the Gazette within 7 days from the date of this Judgment to effectuate the alterations of the total numbers of votes obtained by the Second Respondent, Andrew Napuat and the Petitioner, Xavier Emanuel Harry as reflected in this judgment.
4. The First and Second Respondents are entitled to costs to be agreed or determined on the standard basis.

DATED at Port Vila this 19th day of April, 2016.

BY THE COURT



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Vincent Lunabek
Chief Justice

