

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

Election Petition
Case No. 20/900 SC/EP

IN THE MATTER OF: THE REPRESENTATION OF THE PEOPLE ACT
1983 AND ITS AMENDMENTS

AND: IN THE MATTER OF NATIONAL GENERAL
ELECTION FOR PARLIAMENT FOR TORRES
CONSTITUENCY HELD ON 19TH OF MARCH
2020

BETWEEN: Morris Manmelin

Petitioner

AND: Principal Electoral Officer

First Respondent

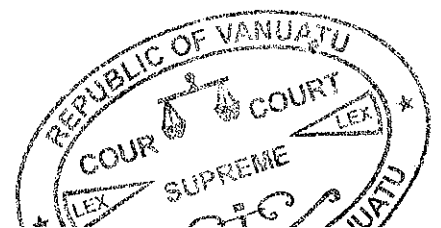
AND: Christopher Emelee

Second Respondent

Date of Hearing: 11th June 2020
Date of Decision: 12th June 2020
Before: Justice Oliver.A.Saksak
In Attendance: Ms Anna Sarisets for Daniel Yawha for the Petitioner
Mrs Florence Williams Samuel for First Responent
Mr Less Napuati for the Second Respondent

JUDGMENT

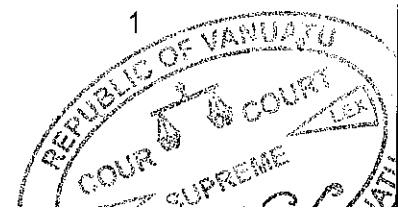
1. The Petitioner Mr Manmelin claimed in his petition that according to the unofficial result for the Torres Constituency that he scored 1012 votes and Mr Emele, the Second Respondent scored 973 votes. He alleged that the results were reversed when the Electoral Commission published the official results on 6th April 2020 indicating that Mr Emele had secured 1012 votes and he secured only 973 votes. He further alleged there was irregularity in the counting of the votes and therefore sought orders that (a) there be a recount of votes cast in the Torres Constituency and (b) that in the event the recount finds the petitioner successful that he be declared the successful candidate.
2. The Court directed a recount and an examination of the counted and void votes, and of the counting of votes pursuant to section 62 of the Representation of the People Act [CAP.146] (the Act) by Order dated 26th May 2020. That order also made provisions for the establishment



and composition of an Examination Committee, (the Committee), the examination process, the venue, date and time of examination and recount, submission of report and a hearing date.

3. Specifically Committee was composed of the counsel for the Petitioner, Mr Yawha or his designate Ms Sarisets, Counsel for the First Respondent Mrs Florence Williams Samuel, Counsel for the Second Respondent Mr Less John Napuati or his designate Mr Simon Erick Willie and Mr Johnson Iati, the Principal Electoral Officer.
4. Following directions from the Court all 12 Ballot Boxes for the 12 Polling Stations of the Torres Constituency were brought to the Court by the First Respondent. These 12 Polling Stations were Lehali, Lesereplag, Veverau, Napque, Hiu, Tegua, Loh, Toga, Valua, Totolag, Rah and Nerenigman.
5. Examination and recounting of votes occurred in Court Room 1 at the Supreme Court premises and began on 2nd June 2020 and ended at 4:30pm on 3rd June 2020 for the counting and examination of valid votes only. Due to non-appearance by Mr Napuati or his designate on 4th June 2020 and the non-availability of the void votes on 3rd June, the examination and counting of void votes were done only on 5th June 2020 in the presence of the Second Respondent in person. This was done with leave of the Court.
6. As a result the Committee sought an extension of time for preparing the Report and leave was granted.
7. The Committee prepared an extensive and comprehensive Report which the Committee submitted to the Court on 11th June 2020. The Court congratulated and commented the Committee for their dedication and commitment for a well-documented Report.
8. The result of the examination of votes and void votes and the recounting of votes are as follows-

Polling Station	Petitioner's votes	Second Respondent's votes	Void votes
1. Lehali	20	92	1
2. Lesereplag	48	68	3
3. Veverau	71	107	0
4. Napque	97	106	1
5. Hiu	59	46	1



6. Tegua	1	51	0
7. Loh	65	67	9
8. Toga	115	111	2
9. Valua	52	65	1
10. Totolag	126	159	8
11. Rah	51	52	3
12. Nerenigman	268	89	4
TOTALS	973	1013	35

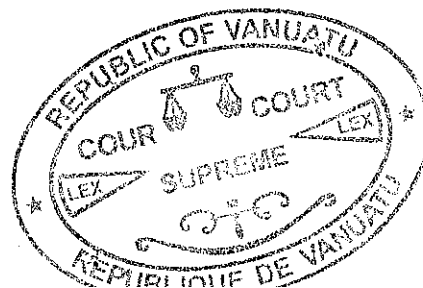
9. The examination and recounting of votes reveal that the 973 votes secured by the petitioner in the recounting is consistent with the 973 votes published in the official declaration by Order No. 43 of 2020. Further it reveals also the number of votes secured by the Second Respondent is increased by one vote missed from the Toga Polling Station thus increasing Mr Emelee's total votes to 1013 instead of 1012 declared in the official result.

10. Further the examination and recounting of void votes by the Committee shows there were a total of 35 void votes instead of 33 as published in the official results.

11. The Committee raised some issues for the Court's consideration concerning torn ballot papers which were excluded or which were torn but counted and the perfect ballot papers that were not counted. These were found at Lehali, Loh, Valua, Napque, Lesereplag, Totolag and Toga Polling Stations

12. For Napque Polling Station there is only one void vote. The other ballot paper found in the same envelope with the torn ballot paper belonging to the petitioner is in good and perfect condition. This should be excluded as it shows a voter putting two photographs of the petitioner into one envelope which is not allowed. So that is an invalid vote.

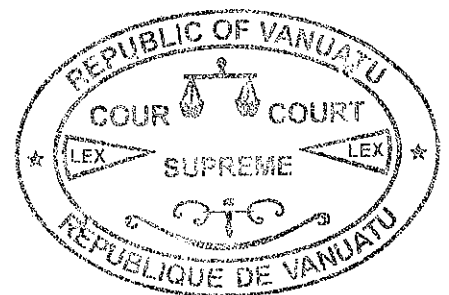
13. At Lesereplag Polling Station the Petitioner had a void vote which is a half-torn photograph and Mr Emelee had 2 ballot papers which are good and perfect except for small tears at the top left hand corner. In my view these could have been valid votes just like the ballot papers for Mr Emelee at Totolag and Toga which were also torn but counted. Even if these 2 votes were disallowed, Mr Emelee still has the highest number of votes than the petitioner.



14. For Loh Polling Station on a recount, Mr Emelee has 8 void votes 2 of which were doubled with Henry Nin's, but 6 of the ballot papers are in good and perfect condition worthy of being counted as valid votes. If these 6 votes were counted, Mr Emelee's total votes would have been 1019.
15. Mr Manmelin had one void vote. His ballot paper is torn at the top left hand corner to the middle. It could have been counted as a valid vote, but this would bring his total up to only 974 votes.
16. For Totolag Polling Station Mr Emelee had 2 void votes and the petitioner had none. Of these 2 void votes one was indeed very badly torn and was correctly invalidated but the other was capable of being counted as a valid vote.
17. As to the issue of whether there was irregularity of counting of the votes to such an extent that the results of the election for the Torres Constituency was affected, the answer is in the negative.

The Result

18. The result of the Committee's examination of the votes cast and of void votes and of the recounting of votes for the Torres Constituency shows-
 - (a) That the Second Respondent Mr Emelee had the highest number of votes than the petitioner, and
 - (b) There was no irregularity in the counting of valid and void votes. Even if there was, it was only to a very limited extent that it did not and could not affect the result of the elections for the Torres Constituency.
19. The petition of the petitioner fails in its entirety and is accordingly dismissed with costs.
20. The Court declares and confirms Mr Christopher Emelee as the duly elected candidate for the Torres Constituency.



21. The Petitioner shall pay the Respondents' costs fixed at VT 150.000 as follows-

- (a) To the First Respondent- VT 75.000, and
- (b) To the Second Respondent – VT 75.000.

These costs shall be paid within the next 28 days, by 13 July 2020.

22. I Order that the deposit fee of VT 20.000 be paid by the Registrar of the Court to the State Law Office in reduction of the costs of VT 75.000. The balance of VT 55.000 shall be paid by the Petitioner by 13th July 2020.

DATED at Port Vila this 12th day of June 2020

BY THE COURT



OLIVER.A.SAKSAK

Judge

